

Consultation Report

European Financial Market Lawyers Group

EFMLG

**THE MONEY MARKET:
LEGAL ASPECTS OF SHORT-TERM SECURITIES**

2 September 2002

CONSULTATION REPORT ON LEGAL ASPECTS OF SHORT-TERM SECURITIES

Contents

Executive summary

| | |
|--|-----------|
| 1. Introduction | 6 |
| 1.1 The Money Market Contact Group and the ACI Short Term Paper Task Force | 6 |
| 1.2 Legal aspects, the EFMLG and methodology | 7 |
| 2. The money market | 9 |
| 2.1 Short-term securities | 11 |
| 2.2 Certificates of deposit | 14 |
| 2.3 Commercial paper | 14 |
| 2.4 Medium-term notes | 15 |
| 3. EU legislation | 15 |
| 3.1 The Investment Services Directive | 16 |
| 3.2 The proposed Prospectus Directive | 18 |
| 3.3 The UCITS Directive | 19 |
| 3.3.1 Definition of money market instruments | 19 |
| 3.3.2 The possibility for UCITS to invest in money market instruments | 19 |
| 4. The legal situation in EU Member States | 24 |
| 4.1 Certificates of deposit | 25 |
| 4.2 Commercial paper | 26 |
| 4.3 Medium-term notes | 27 |
| 5. Commercial paper markets – Case studies and comparison | 29 |
| 5.1 Domestic commercial paper – The French commercial paper market | 29 |
| 5.2 Legal aspects of the French commercial paper market | 31 |
| 5.3 The euro commercial paper market | 34 |
| 5.4 Legal aspects of the ECP market | 39 |
| 5.5 The US commercial paper market | 40 |
| 5.6 Legal aspects of the US commercial paper market | 43 |
| 5.7 Comparison of legal regimes for commercial paper | 43 |
| 6. Market documentation | 45 |
| 6.1 Preliminary remarks | 45 |
| 6.2 Governing law | 46 |
| 6.3 Domestic markets | 46 |
| 6.4 Provisions to be compared | 46 |
| 6.5 Outlook and further actions | 47 |
| 7. Conclusions | 47 |

ANNEXES

| | |
|-------------------|--|
| ANNEX I | CERTIFICATES OF DEPOSIT |
| ANNEX II | COMMERCIAL PAPER |
| ANNEX III | MEDIUM-TERM NOTES |
| ANNEX IV | CERTAIN REGULATORY ASPECTS OF COMMERCIAL PAPER |
| ANNEX V | THE EVOLUTION OF FUND RAISING – THE ITALIAN CASE |
| ANNEX VI | FRENCH CP ISSUERS AND EURO-CP ISSUERS |
| ANNEX VII | FEATURES OF FRENCH CP AND EURO-CP: SOME ELEMENTS OF COMPARISON |
| ANNEX VIII | SAMPLE OF MARKET DOCUMENTATION |
| ANNEX IX | THE EUROPEAN FINANCIAL MARKETS LAWYERS GROUP AND THE SUB-GROUP ON SHORT TERM SECURITIES |

BIBLIOGRAPHY

OPEN CONSULTATION NOTICE

This Report is published by the European Financial Market Lawyers Group (EFMLG) as a consultative document for views and comments from interested parties.

Comments are welcome until the end of November 2002 and can be sent by post to the European Central Bank for the attention of Mikael Stenström, Assistant General Counsel, Directorate General Legal Services, Postfach 16 03 19, 600 66 Frankfurt am Main, Germany, or by e-mail to:

secretariat@efmlg.org

EXECUTIVE SUMMARY

Following the introduction of the euro on 4 January 1999, the European money markets have tended to integrate across the euro area. The establishment of the TARGET system for the transfer of wholesale payments and the introduction of the euro-wide interest reference rates, Euribor and Eonia, have facilitated these developments towards integration. However, there remain segments of the euro money market where integration has been limited, namely the secured money market, or the “repo” market, and the market for short-term and liquid securities. The present Report contains a legal analysis of the short-term securities most used in the money market, namely, certificates of deposit (CDs), commercial paper (CP), and medium-term notes (MTNs). The Report has been prepared by a Sub-Group of the EFMLG on legal aspects of short-term securities in support of the work in this field of the Money Market Contact Group, the Euribor ACI and the Short Term Paper Task Force.

The Report details the differences in the legal, regulatory and taxation regimes, as well as the market documentation, that still separate the national markets for short-term securities. It places special emphasis on CP markets. In comparison with the CP market in the United States, the euro-denominated CP market has strong potential for growth. The French CP market, together with the London-based “euro commercial paper” (ECP) market, are the most relevant euro-denominated CP markets. The findings of this Report and its Annexes indicate that the main legal barriers to the integration of the short-term money market are the differences between jurisdictions with regard to:

- (1) the national legal definitions,
- (2) the legal specification of the entities authorised to issue such securities,
- (3) the minimum amount required for the issue,
- (4) the obligation, or lack of obligation, to file prospectuses,
- (5) the withholding tax applied to interest payments,
- (6) the capacity of UCITS to invest in such securities, and
- (7) the degree or intensity of regulation and supervision.

The EFMLG draws the attention of Member States and of the European Community to these issues, and recommends urgent action. The Preliminary Report prepared by Euribor ACI and the Short Term Paper Task Force of 2 September 2002 contains specific substantive proposals on which to base necessary harmonisation. Furthermore, differences in standard market documentation need to be revised and new harmonised standards agreed. The recommendations at the end of this Report indicate the required legal actions to achieve the desired integration of these markets. These recommendations

are put forward under the assumption that “integration of markets” require a legal and regulatory level playing field, i.e. the same rules across the euro area, so that these short-term financial instruments are equally available to economic agents throughout the single currency area.

The Report is conceived as a “Consultation Report” with the aim to trigger comments and reactions from interested parties from all sides of the financial industry, including regulators and supervisors. A parallel consultation on the ACI Preliminary Report is arranged by Euribor ACI and hosted by the ECB and the consultation process will thus cover both the EFMLG Report on legal aspects and the Preliminary Report prepared by Euribor ACI and the Short Term Paper Task Force. The EFMLG and Euribor ACI will co-ordinate the processing of the contributions received and Euribor ACI intends to convene meetings with interested parties on the basis of such contributions received. The general aim of the procedure is to elaborate practical recommendations, reflecting the point of view of market participants as a whole, susceptible to deliver an effective integration of the short-term securities market. On the legal side, the outcome is envisaged to include the preparation of a revised Report on legal aspects that may be the starting point for the necessary action in the legal and regulatory domain.

THE MONEY MARKET: LEGAL ASPECTS OF SHORT-TERM SECURITIES

1. Introduction

1.1 The Money Market Contact Group and the ACI Short Term Paper Task Force

In the third quarter of 1999, the Directorate General Operations of the European Central Bank (ECB) established the Money Market Contact Group as an informal forum for contact between senior bankers from EU commercial banks to discuss market developments related to the money market. Among the issues examined so far, the Money Market Contact Group has considered the insufficient level of development and integration of the euro area short-term securities market (in comparison, for example, with the USA) and why this market still has a national character. The Money Market Contact Group proposed a set of short-term actions for further consideration, including the standardisation of product features; agreement on common settlement terms at the euro area level; and the establishment of a euro area-wide collection of statistics. The Money Market Contact Group felt that some possible long-term programmes could also be considered, including the establishment of a EU-wide regulated market for euro-denominated short-term securities; the standardisation of product documentation; the dematerialisation of securities; and the centralisation of settlement at the euro area level.

To find an appropriate external grouping of market participants that could address the short-term initiatives indicated above, the Money Market Contact Group contacted the “Euribor ACI, the Financial Markets Association”. As a result, Euribor ACI has established a group of market participants (the Short Term Paper Task Force) to consider the topic further. The Short Term Paper Task Force was set up with a view to develop initial proposals for implementation under the auspices of market associations and to promote the development and integration of the short-term paper market in the EU, particularly within the euro area. The findings of the Short Term Paper Task Force were presented to the ECB Money Market Contact Group in June 2002 and are set out in a Preliminary Report dated 2 September 2002.

This current Report on the legal aspects of short-term securities has been prepared in support of the work of the Money Market Contact Group, the Euribor ACI and the Short Term Paper Task Force. The Report covers certificates of deposit (CDs), commercial paper (CP) and medium-term-notes (MTNs), with the focus on CP.

1.2 Legal aspects, the EFMLG and methodology

With the introduction of the euro, the previously national money markets - taken as a whole - have been integrated into a euro area money market. A single monetary authority, the ECB - which together with the national central banks (NCBs) of the euro area Member States constitute the Eurosystem - conducts one single monetary policy for the whole euro area. This integration process was supported by the new central bank payment system for real-time gross settlement of funds transfers throughout the euro area, TARGET. Moreover, the two reference rates for the unsecured money market, EONIA (euro overnight index average) and EURIBOR (euro inter-bank offered rate), provide uniform price references for maturities from overnight to one year. While these developments have successfully integrated the euro area money market as a whole, short-term securities markets remain mainly domestic in nature. One legal aspect of the domestic nature of these markets is that debt securities are generally governed by the respective national legal regime rather than by EU-wide rules. Accordingly, to review the current legal situation with regard to short-term debt securities it is necessary to investigate each of the various national laws in the individual EU Member States. To do this and to consider the legal aspects of short-term securities, the European Financial Markets Lawyers Group (EFMLG), a group of senior financial markets lawyers active in commercial banks in the EU and established under the auspices of the ECB, has prepared the present Report.¹

The investigation initially focused on the situation in the euro area Member States (participating Member States),² where the single currency facilitates the integration of markets, but the Report also considers the legal situation in the EU Member States that have not adopted the euro (non-participating Member States).³ This EU-wide geographic scope would appear appropriate considering the level of trading of euro denominated short-term securities in the non-participating Member States and the fact that any EU legislation in this field of law will apply throughout the EU.⁴ For comparison,

¹ The Report has been prepared by a Sub-Group of the EFMLG on short-term securities chaired and co-ordinated by Mikael Stenström, Assistant General Counsel of the ECB, and consisting of Nuria Alonso Jimenez of Banco Bilbao Vizcaya Argentaria; David Bloom of HSBC Holdings; Ivana Genestrone of San Paolo IMI S.p.A.; Dr Frédéric Nizard of Crédit Agricole S.A.; Dr Ulrich Parche of Hypo Vereinsbank; Frank Tillian of Bank Austria; Dirk Vloemans of Fortis Bank and Stéphane Kerjean of the ECB. The Report prepared by the Sub-Group has been reviewed, discussed and adopted by the full EFMLG. The members of the EFMLG and the Sub-Group on short-term securities are set out in Annex IX of this Report. Each member of the EFMLG is an expert in the field of financial markets law in the legal system of their respective Member State with a high degree of practical experience. Although selected with a view to cover the banks represented in the panel that elaborate the Euribor and Eonia reference money market rates, the members of the EFMLG participate in the work of the Group on a strictly personal basis. The views expressed in this Report are those of the members and do not necessarily reflect those of their institutions or of the ECB.

² Belgium (BE), Germany (DE), Greece (GR), Spain (ES), France (FR), Ireland (IE), Italy (IT), Luxembourg (LU), the Netherlands (NL), Austria (AT), Portugal (PT) and Finland (FI). The information in the Annexes is still incomplete with regard to certain Member States.

³ Sweden (SE) and United Kingdom (UK). Information on Denmark (DK) is still missing.

⁴ The situation in the non-EU Member States that are part of the European Economic Area (EEA) was not considered, although these countries - Norway, Iceland and Liechtenstein - may also be affected by EU legislation in the field of short-term securities.

information on the legal situation in the USA and references to the US market can be found in the country-specific case studies in Chapter 5 of the Report and in the Annexes.⁵

Some of the rules governing the instruments covered by the Report are not statutory, but may still be significant to the functioning of the relevant market in the Member State in question. It would therefore appear necessary to also consider such non-statutory rules, including in particular the documents issued by market associations or used by market participants. Accordingly, the review considers market documentation and other types of legal rules and practice applied by market participants as well as rules found in statute, and tries to indicate when the rules referred to are non-statutory. In addition, the review of terms and conditions used by securities clearing and settlement systems may yield useful information on how short-term securities transactions are cleared and settled.⁶

The result of this investigation is presented in the following text and Annexes. Chapter 2 contains a brief description of the money market and the instruments covered by the Report. Chapter 3 describes the existing EU legislation relating to the short-term securities currently under review. Then Chapter 4 gives narrative summaries of the situation in EU Member States in respect of each of the three debt securities, CDs, CP and MTNs. In addition, three Annexes describes the legal situation concerning CDs, CP and MTNs in the various EU Member States - and, for comparison, the United States - on a country-by-country basis. Annex I provides information on the legal provisions and rules for CDs, while Annex II addresses CP and Annex III MTNs. Each of these Annexes covers issues concerning CDs, CP and MTNs, respectively, within ten areas and the relevant national legal provisions in each of the Member States, and for the USA. The ten areas covered are (1) legal basis; (2) legal definitions; (3) issue; (4) rating; (5) investors and prospectuses; (6) trading; (7) the nature of rights; (8) procedures for clearing and settlement; (9) taxation and stamp duty; and (10) supervisory and regulatory aspects.⁷

The summaries in Chapter 4 also set out the findings with regard to the areas of law covered by the Annexes. However, some of these areas would merit further consideration. For instance, the applicable tax regimes indicated in the Annexes and in Chapter 4 below represent a field of law that may require further analysis by tax experts. Moreover, issues related to securities settlement are not unique to short-term securities but are of common concern for securities trading generally, an area which has already been much analysed. It is assumed that the field of securities settlement will be considered further by securities settlement experts.

Annex IV addresses certain regulatory aspects of relevance to the activities in the commercial paper market, namely (i) capital adequacy; (ii) liquidity ratios, and (iii) ECB eligibility. This Annex provides

⁵ The information in the Annexes with regard to the United States is less detailed compared to the EU Member States and not intended to be complete in all areas.

⁶ However, the scope of the present Report does not cover the general topic of clearing and settlement of securities transactions in the EU.

⁷ For a more detailed description of the ten areas covered by Annexes I – III, see the introduction to Chapter 4.

summary information on a country-by-country basis regarding the distinction between capital usage related to trading portfolios and to investment portfolios; whether it is beneficial to hold CP compared to unsecured lending to corporates; and whether CP may be used as collateral in conjunction with Eurosystem transactions.

Chapter 5 contains case studies on the legal aspects of commercial paper in France, the euro commercial paper market and, for comparison, the US commercial paper market. These case studies are supplemented by a reference to the evolution of fund raising in Italy in Annex V and two tables on French CP and euro CP issuers in Annex VI. In addition, Annex VII sets out a comparative table concerning French CP and euro-CP.

Chapter 6 considers a sample of the various existing sets of market documentation, as listed in Annex VIII. This Chapter considers the differences in the drafting of market documents under the different governing legal systems and whether it is possible to standardise the legal documentation.

Finally, Chapter 7 contains some concluding remarks on the legal regimes applicable to short-term securities and considers some changes that could be proposed in support of integration, including changes to the legal documentation used by market participants. These recommendations and proposed steps towards increased market integration are included for further consideration by market participants and other interested parties, including EU and national authorities. The present Report is therefore made publicly available as a consultative document to invite comments, corrections and suggestions from such interested parties.⁸ The finalisation of the Report on legal aspects of short-term securities should thus be seen as a starting point for further analysis and consideration with a view to achieving an integrated and well functioning short-term securities market in Europe.

2. The money market

The term “money market” generally refers to the wholesale market for low-risk, highly liquid, short-term debt instruments and denotes a part of the capital market that is different from the equity market and the bond market.⁹ The money market differs from other financial markets in that it is typically a wholesale inter-bank market where large transactions take place. Through the money market banks and other entities can receive large amounts of money from other banks and liquid entities. Moreover, the euro area money market plays a crucial role in transmitting the monetary policy decisions of the ECB, as described in more detail in the ECB publication “The Monetary Policy and the ECB”.¹⁰

⁸ Comments on the Report are welcome until the end of November 2002 and can be sent by post to the European Central Bank for the attention of Mikael Stenström, Assistant General Counsel, Directorate General Legal Services, Postfach 16 03 19, 600 66 Frankfurt am Main, Germany or by e-mail to secretariat@efmlg.org.

⁹ For a general description of the term “money market”, see M. Stigum, *The Money Market*, third edition, 1990.

¹⁰ See *The Monetary Policy of the ECB*, European Central Bank, 2001, in particular Chapters 2.6 and 4.

“A central bank steers short-term money market rates by signalling its monetary policy stance and by managing the liquidity situation in the money market. The central bank, as the sole issuer of banknotes and bank reserves, is the monopoly supplier of the monetary base. By virtue of its monopoly, the central bank is able to manage the liquidity situation in the money market and influence money market interest rates.

As well as steering interest rates by managing liquidity, the central bank can also signal its monetary policy stance to the money market. This is usually done by changing the conditions under which the central bank is willing to enter into transactions with the money market.

In its operations, the central bank also aims to ensure an orderly functioning of the money market and to help banks meet their liquidity needs in a smooth and well-organised manner. This is achieved by providing regular refinancing to the banks and facilities that allow them to deal with end-of-day balances and to cushion transitory liquidity fluctuations.”¹¹

Accordingly, the money market is important in enabling large sums of money to be shifted between banks to ensure the availability and efficient use of liquidity where it is needed and as a means of transmission for monetary policy purposes. *“A deep and integrated money market is a precondition for an efficient monetary policy, since it ensures an even distribution of central bank liquidity and a homogenous level of short-term interest rates across the single currency area.”¹²*

The legal framework established by the ECB often refers to the concept of the money market, for instance in the TARGET Guideline¹³ and in the Guideline on monetary policy instruments and procedures.¹⁴ Moreover, the ECB Regulation on the consolidated balance sheet of the MFI sector¹⁵ sets out useful criteria on the concept of money market instruments for statistical purposes. To define money market funds (MMFs), the Regulation characterises money market instruments as *“those classes of transferable debt instruments [that] are normally traded on the money market (for example, certificates of deposit, commercial paper and banker’s acceptances, treasury and local authority bills) because of the following features:*

- (i) liquidity, where they can be repurchased, redeemed or sold at limited cost, in terms of low fees and narrow bid/offer spread, and with very short settlement delay; and*
- (ii) market depth, where they are traded on a market which is able to absorb a large volume of transactions, with such trading of large amounts having a limited impact on their price; and*

¹¹ The Monetary Policy of the ECB, European Central Bank, 2001, pp. 59-60.

¹² The Monetary Policy of the ECB, European Central Bank, 2001, p. 23.

¹³ Guideline of the European Central Bank of 26 April 2001 on a Trans-European Automated Real-time Gross Settlement Express Transfer system (TARGET) (ECB/2001/3), EC (OJ) L 140, 24.5.2001.

¹⁴ Guideline of the European Central Bank of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem ECB/2000/7, EC OJ L310, 11.12.2000.

¹⁵ ECB Regulation of 22 November 2001, ECB/2001/13, EC OJ L333 17.12.2001.

- (iii) *certainty in value, where their value can be accurately determined at any time or at least once a month; and*
- (iv) *low interest risk, where they have a residual maturity of up to and including one year, or regular yield instruments in line with money market conditions at least every 12 months; and*
- (v) *low credit risk."*

In respect of MFI balance sheet statistics, which are the basis for the compilation of the monetary aggregate M3, this ECB Regulation defines short-term debt securities by their original maturity of up to and including two years.¹⁶ For ECB securities issues statistics, covering all economic sectors, short-term debt securities are defined in Annex 11 of the Guideline of the ECB on Money and Banking Statistics.¹⁷ According to the Guideline, short-term debt securities have an original maturity of one year or less.

Another aspect of the money market, of particular relevance for any legal characterisation, is that the money market is not one market. Instead, it comprises several different markets in respect of specific and distinct instruments used by the agents active in the money market to interact with each other in the above context. *"The most significant segments of the money market are [...] the unsecured deposit market (where credit institutions exchange short-term liquidity without the guarantee of collateral), the repo market (in which market participants exchange short-term liquidity against collateral), the swap market (in which fixed interest rate payments are exchanged for floating interest rate payments), the futures markets for short-term instruments, and the markets for short-term securities, including Treasury bills, commercial paper (CP), certificates of deposit (CDs) and other assets."*¹⁸ The purpose of the present Report is not to describe the legal dimension in detail with regard to the whole of the money market, but rather to consider certain specific instruments traded within the segment of the money market referred to as the markets for short-term securities.

2.1 Short-term securities

The instruments traded on the short-term securities market include government securities (mainly treasury bills) and securities issued by private entities, mainly commercial paper (which are short-term securities traditionally issued by non-financial corporations) and certificates of deposits (which are short-term securities issued by banks). Another, somewhat narrower, term used in relation to the short-

¹⁶ ECB Regulation of 22 November 2001, ECB/2001/13, concerning the consolidated balance sheet of the MFI sector, Annex 1, Part 3, 11a/11b.

¹⁷ See Guideline of 30 July 2002 of the European Central Bank concerning certain statistical reporting requirements of the European Central Bank and the procedures for reporting by the National Central Banks of statistical information in the field of money and banking statistics (ECB/2002/5), Annex 11.

¹⁸ J. Santillan, M. Bayle and C. Thygesen, *The Impact of the Euro on Money and Bond Markets*, ECB Occasional Paper Series, No. 1, July 2000, p. 11.

term securities market is “short-term paper”, which can be defined as short-term securities with a maturity of up to two years issued by non-sovereigns (banks, corporations and local authorities).

In the ECB publication “The Euro Money Market”,¹⁹ the market for short-term securities is referred to as an area where market integration can be improved. *“The market for short-term securities took a further step towards integration, although some fragmentation among the euro area countries remains. In some of the countries, the market is still embryonic, with few transactions that are essentially domestically oriented. This is seen by market participants as being mainly the result of infrastructure heterogeneity, such as a lack of harmonisation in the trading environment and settlement systems, as well as different legal and tax treatments.”*²⁰

The degree of financing in the euro area through the issue of debt securities was also addressed in the ECB publication on its monetary policy which stated that *“[f]inancing through the issuance of debt securities is smaller in the euro area than in the United States and Japan. The amounts outstanding at the end of 2000 were 101% of GDP in the euro area, compared with 147% and 127% of GDP in the United States and Japan respectively [...]. Looking at the non-financial corporate sector, the amount outstanding of debt securities issued by non-financial co-operations in the euro area was 6% of GDP at the end of 2000, while it totaled 25% and 16% of GDP in the United States and Japan respectively.”*²¹ The ECB publishes monthly data in the monthly bulletin and on the internet on securities issues statistics, including a country breakdown for the amounts outstanding as shown in the table below.²² The data for short-term debt securities include commercial paper issued by non-monetary financial corporations and non-financial corporations and certificates of deposit issued by MFIs. Euro commercial paper²³ issued by all sectors are also included in principle.

¹⁹ The Euro Money Market, European Central Bank, July 2001.

²⁰ The Euro Money Market, European Central Bank, July 2001, p. 14.

²¹ The Monetary Policy of the ECB, European Central Bank, 2001, p. 28.

²² ECB Monthly Bulletin, table 3.6 and <http://www.ecb.int/stats/sec/sec.htm>.

²³ See Chapters 5.3 – 5.4 below.

**Euro denominated debt securities by country of residency,
sector of the issuer, and original maturity ^{1,2,3)}**

(EUR billions, amounts outstanding at the end of June 2002, nominal values)

| Country | All issuers | | | General Government ^{4, 5)} | | Monetary Financial Institutions | | Non-monetary financial corporations | | Non-financial corporations | |
|--------------------------------|-------------|------------|-----------|-------------------------------------|-----------|---------------------------------|-----------|-------------------------------------|-----------|----------------------------|-----------|
| | Total | Short-term | Long-term | Short-term | Long-term | Short-term | Long-term | Short-term | Long-term | Short-term | Long-term |
| Euro area | 7334.2 | 671.4 | 6662.8 | 325.5 | 3483 | 260.3 | 2398.5 | 3.7 | 413.9 | 81.8 | 367.4 |
| Austria | 205.9 | 2.6 | 203.3 | 1.3 | 108.4 | 1.4 | 87.1 | 0 | 3.5 | 0 | 4.2 |
| Belgium | 345.7 | 44.4 | 301.4 | 32.7 | 215.5 | 5.8 | 67.9 | 1.9 | 0.3 | 4 | 17.6 |
| Germany | 2291.1 | 67.2 | 2223.8 | 21.3 | 818.1 | 30.3 | 1360.3 | 0 | 0 | 15.6 | 45.4 |
| Spain | 419.3 | 51.4 | 367.9 | 36.6 | 273.7 | 10.6 | 47.9 | 0.9 | 33 | 3.3 | 13.2 |
| Finland | 78.4 | 23.4 | 55 | 5 | 45.1 | 13.8 | 3.9 | 0 | 2.1 | 4.5 | 3.9 |
| France | 1489.1 | 289.6 | 1199.5 | 73.1 | 656.3 | 169.6 | 309.1 | 0 | 31.1 | 46.9 | 203 |
| Greece | 115.2 | 2 | 113.2 | 1.8 | 113 | 0.2 | 0.1 | 0 | 0 | 0 | 0.2 |
| Ireland | 22.4 | . | 22.4 | . | 22.4 | . | . | . | . | . | . |
| Italy | 1593.2 | 135.8 | 1457.4 | 135.8 | 1005.5 | 0 | 355.7 | 0 | 62.6 | 0 | 33.5 |
| Luxembourg | 42.6 | 14.9 | 27.7 | 0.1 | 0.6 | 14.8 | 27.1 | . | . | . | . |
| The Netherlands | 634.6 | 31.6 | 603.1 | 17.1 | 169.5 | 13.7 | 114.5 | 0.6 | 279.2 | 0.2 | 39.9 |
| Portugal | 96.7 | 8.5 | 88.2 | 0.7 | 54.8 | 0.1 | 24.9 | 0.3 | 2 | 7.3 | 6.5 |
| Non-residents of the euro area | 1015.5 | 54.4 | 961.1 | 1.1 | 269.6 | 21.3 | 250 | 27.6 | 331.8 | 4.4 | 109.8 |

“.” = Data are not yet available

Source: ECB securities issues statistics

- 1) Including items expressed in the national denominations of the euro. Euro-denominated issues by non-euro area residents are summarised in the last line of the table (“non-residents of the euro area”).
- 2) The sector classification is based on the European System of Accounts 1995 (ESA95).
- 3) “Short-term” means securities with an original maturity of one year or less (in accordance with ESA95, in exceptional cases two years or less). Securities with a longer original maturity, or with optional maturity dates, the latest of which is more than one year away, or with indefinite maturity dates, are classified as long-term.
- 4) The data concerning the general government sector are not directly comparable to the data on government debt collected for the purposes of the “excessive deficit procedure” of the Stability and Growth Pact described in Council Regulation (EC) No 1467/97 of 7.7. 1997.
- 5) International organisations are included in the figures for debt securities issued by non-resident general government.

The present Report focuses on the legal aspects of short-term securities, particularly commercial paper, and the market for such paper in the euro area where the adoption of a single currency can be expected to facilitate market integration. However, our investigations when preparing the Report have had a broader scope and the following sections consider the legal situation in the Member States of the

EU²⁴ in relation to three specific types of negotiable debt instruments and the legal regimes applicable to these instruments, namely:

- (i) certificates of deposit;
- (ii) commercial paper; and
- (iii) medium-term notes.

2.2 Certificates of deposit

Negotiable certificates of deposits (CDs) are certificates issued by credit institutions as proof of receipt of large deposits made by corporations or other (large) investors. Compared to regular time deposits with a fixed maturity, they have the added value of being tradable on a market. *“Today, when large banks want to buy term deposits wholesale, they turn typically to the deposit note market. In this market, banks sell notes that are designed to resemble and to trade in the secondary market like a corporate note or bond, but which are in fact a bank deposit.”*²⁵ In the euro area, CDs are exclusively issued by credit institutions, including non-resident banks that can issue CDs in a particular domestic market under the European financial passport.

The various Member States of the euro area differ considerably with regard to the maturity of CDs, ranging from no restrictions at all or very short minimum maturity of only one day up to three years or even five years. In most Member States, CDs are in book-entry form and subject to the general rules on banking supervision and certain additional regulations, including in some cases the involvement of the national central bank (NCB).²⁶

2.3 Commercial paper

The term commercial paper (CP) refers to short-term securities where *“an unsecured promissory note [is] issued for a specific amount and maturing on a specific day. All commercial paper is negotiable, but most paper sold to investors is held by them to maturity. Commercial paper is issued not only by industrial and manufacturing firms, but [also] by finance companies. Finance companies normally sell their paper directly to investors. Industrial firms, in contrast, typically issue their paper through dealers. Over the years, bank holding companies, municipalities and municipal authorities have joined the ranks of commercial paper issuers.”*²⁷

²⁴ The Report also covers (in Chapter 5) the euro CP market and, for comparison, certain aspects of the market in the USA for short-term securities (as explained in Chapter 1).

²⁵ M. Stigum, *The Money Market*, third edition, 1990, pp. 54-5.

²⁶ For further details of the main features of certificates of deposit, see Annex I to *The Euro Money Market*, European Central Bank, July 2001.

²⁷ M. Stigum, *The Money Market*, third edition, 1990, p. 48.

The various Member States have different categories of issuers of CP and this Report considers such domestic CP, with the French CP market as an example, as well as the so-called euro CP market, as further described in Chapter 5. In most of the Member States, both corporations and financial institutions issue CP, and in a few other Member States the issuers can be local authorities or international public institutions as well as banks. As with CDs, the lower limits on the maturity periods ranges between no limit at all or very short limits (one or two days) up and until two or three years or no limit at all. Again, with few exceptions, CP is generally issued in book-entry form.²⁸

2.4 Medium-term notes

The emergence of a market for medium-term notes (MTNs) had its origin in the commercial paper markets whereby MTNs were initially CP with longer maturity. While maturities tend to remain long in some EU Member States, they differ from country to country and in some instances can be rather short. In practice, however, the minimum maturity would not be shorter than one year with the upper limit in some Member States being 10 and 30 years. Longer maturities and additional features that have been added to MTNs over time make it possible to assimilate MTNs with corporate bonds, and the current Report retains references to MTNs mainly as a point of comparison in relation to CDs and CP with short-term maturity. For instance, the issuers of MTNs are generally the same type of institutions that may issue CDs and CP.²⁹

3. EU legislation

Before considering the legal situation at the domestic level, the following Chapter outlines the Community law background of debt securities with particular focus on the concept of money-market instruments.

Under Community law, “money market instruments” has traditionally referred to a specific category of transferable securities. Their distinguishing features are described in several parts of the Community financial legislation. However, due to the diversity of the classes of instruments negotiated on national money markets, it has until now been left to each of the EU Member States to identify in their respective national laws the specific legal nature and the characteristics of such instruments. Several Community legislative initiatives recently adopted or currently under discussion³⁰

²⁸ For further details of the main features of commercial paper, see Annex I to The Euro Money Market, European Central Bank, July 2001.

²⁹ For further details of the main features of medium-term notes, see Annex I to The Euro Money Market, European Central Bank July 2001.

³⁰ For instance, the Directive 2002/47/EC of the European Parliament and of the Council on financial collateral arrangements of 6 June 2002 (the Collateral Directive EC OJ L168/43, June 2002) refers to the concept of “money market” and of “money market instruments” without further specifying them. The notion of “money market instruments” is covered by the concept of “financial instruments” (see Article 2(e) of the Collateral Directive). For the purpose of the

refer to the concept of money market instruments, but the approach used in the past may explain why there is no specific legal framework applicable to these instruments at the EU level.³¹ In addition, different Community sectoral rules (found in the EU Banking directives, the Investment Services Directive, etc) might apply depending on the nature of issuers (for instance credit institutions or corporates).

3.1 The Investment Services Directive

The Investment Services Directive³² (ISD) of 1993 defines investment services as "*any of the services listed [...] relating to any of the instruments listed [...] that are provided for a third party*". In addition, a regulated market is defined as a market for the instruments listed in the Directive. Among these instruments, the ISD distinguishes transferable securities from money-market instruments. The notion of transferable securities covers "*those classes of securities which are normally dealt in on the capital market, such as government securities, shares in companies, negotiable securities giving the right to acquire shares by subscription or exchange, depository receipts, bonds issued as part of a series, index warrants and securities giving the right to acquire such bonds by subscription*". Money market instruments is referred to as "*those classes of instruments which are normally dealt in on the money market such as treasury bills, certificates of deposit and commercial paper*".³³

The European Commission is currently reviewing the ISD and after the current consultations is expected to make a formal proposal by the end of 2002 for a directive amending the ISD. At the current stage,³⁴ the Commission has suggested that the ISD's classification of financial instruments should be amended. The revised ISD would thus no longer refer to the traditional concept of money market instruments but to securities normally dealt in on the money market. According to the new proposed classification, financial instruments would include transferable securities and derivative instruments and a combination of these, while transferable securities would cover:

- shares or certificates representing an ownership interest in a company and depository receipts in respect of shares;
- bonds or other debt securities whether or not convertible into shares;

proposal for a Directive of the European Parliament and of the Council on insider dealing and market manipulation (market abuse), a financial instrument is defined as covering, among other things, transferable securities (as defined in the ISD) and money market instruments. For another example, see the Council common position adopted on 19 December 2001 on the directive concerning the distance marketing of consumer financial services, Article 6 "Right of withdrawal", EC OJ of 5 March 2002, C58E/32.

³¹ The EU Action Plan for Financial Services adopted in 1999 does not identify any specific need for a Community legislative action in the area of short-term securities.

³² Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field: EC OJ L 141, 11.6. 1993, pp.27-46.

³³ See Article 1(4) and 1(5) of the ISD.

³⁴ See the Commission-revised orientations of March 2002.

- securities normally dealt in on the money market (such as certificates of deposit, euro-commercial paper);
- units in collective investment schemes; and
- warrants or similar securities.

Under the proposed new classification, securities normally dealt in on the money market would therefore become a sub-division of transferable securities within the meaning of the ISD, and these transferable securities would be included in the wider concept of financial instruments.³⁵ The distinction between money market instruments and transferable securities would thus disappear in the new ISD unlike in other EU financial legislation.³⁶ The distinction would also disappear between money market instruments admitted to or dealt in on a regulated market within the meaning of the ISD and other money market instruments (the distinction still exists in, for instance, the UCITS Directive³⁷).

None of the domestic CP markets in EU Member States is today qualified as a “regulated market” within the meaning of the ISD. This observation applies also to the euro CP market.³⁸ According to the revised orientations for the amendment of the ISD prepared by the Commission in March 2002, regulated markets are defined as *"operating arrangements for organised execution of orders in financial instruments from multiple buy and sell interests, functioning regularly, subject to a set of formalised and non-discretionary rules, procedures or processes which result in agreement(s) to buy or sell financial instruments [...]"*. Each of the legal regimes of the domestic CP markets provides a certain degree of regulation, but it is not certain whether such markets will come within the criteria for regulated markets established in the revised ISD. Chapter 3.3.2 further considers the link between the qualification as a “regulated market” and the possibility for UCITS to invest in money market instruments.

³⁵ The European Commission may, under the comitology procedure, clarify whether specific forms of transferable securities or derivative instruments fall within the scope of the definition.

³⁶ Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, EC OJ L 126, 26.5. 2000, pp. 1- 59, refers incidentally to the notion of "money market instruments" and distinguishes them from "transferable securities". In particular, Annex I of this directive lists the activities subject to mutual recognition which includes in particular money transmission services and trading for own account or for account of customers in: (a) money market instruments (cheques, bills, certificates of deposit, etc.); (b) foreign exchange; (c) financial futures and options; (d) exchange and interest-rate instruments; (e) transferable securities; They also include participation in securities issues and the provision of services related to such issues.

³⁷ See Chapter 3.3 below.

³⁸ See also Chapter 4.

3.2 The proposed Prospectus Directive

The Commission proposal for a directive on the prospectuses to be published when securities are offered or admitted to trading³⁹ (the proposed Prospectus Directive) is being reviewed by the European Parliament and the Council. The review aims in particular to promote the protection of investors through the disclosure of full and appropriate information concerning securities and the issuers of such securities. The proposed Prospectus Directive mainly refers to securities that are offered to the public or are admitted to trading on a regulated market as defined in the ISD.⁴⁰

In March 2002, the European Parliament has introduced in first reading some amendments which may be interpreted as excluding from the scope of the proposed Prospectus Directive debt securities such as CP having a maturity shorter than one year while covering debt securities with a maturity above one year (MTNs in particular).⁴¹

In its amended proposal of August 2002, the Commission mentions that "*certificates of deposit have been withdrawn from the scope of the directive*".⁴² Secondly, the Commission indicates that "*the definition of securities has been aligned on that in the ISD and clarified with regard to the rules for money market instruments with a fixed maturity*".⁴³

The Commission amended proposal might in principle contribute to resolving any uncertainty over the application of the proposed Prospectus Directive to money market instruments. However, as mentioned above, there remains a risk of confusion incurred by the Commission proposed changes to the ISD classification which would lead to the incorporation of money market instruments as a sub-category of transferable securities and subsequently to the applicability of the proposed Prospectus Directive to CP. This point should therefore be clarified before the directive is adopted and implemented in Member States.⁴⁴

³⁹ EC OJ C240 E/272 28.8.2001. The original proposal for a directive was adopted by the Commission on 30 May 2001. An amended proposal was adopted by the Commission on 9 August 2002 (see COM(2002)460 final).

⁴⁰ See Article 1.1 of the Commission amended proposal.

⁴¹ See in this respect the Report by the European Parliament's Economic and Monetary Affairs Committee of 27 February 2002.

⁴² See the Commission Explanatory Memorandum.

⁴³ Article 2(1)(a) of the amended proposal defines "securities" as "transferable securities as defined by Article 1(4) of the ISD with the exception of bonds or other debt securities, having a maturity of less than one year (...)". Since the current ISD distinguishes transferable securities and money market instruments, it could therefore be concluded that the proposed Prospectus Directive, in its amended version, does not cover money market instruments (CP in particular).

⁴⁴ See Chapter 3.1 and also the concluding remarks in Chapter 7 below.

3.3 The UCITS Directive

3.3.1 Definition of money market instruments

The Council Directive 85/611/EC on the co-ordination of laws, regulations and administrative provisions relating to UCITS, as amended in January 2002⁴⁵ (the UCITS Directive), mirrors the structure of the current ISD in that “money market instruments” are distinguished from “transferable securities”.⁴⁶ In 1997, the Commission explained in the explanatory memorandum to its proposal why this distinction had initially been inserted. In particular, the purpose was to make clear that money market instruments are types of transferable securities and existing regulatory solutions in Member States must be taken into account:

"Money market instruments are considered to be comprised in the category of transferable securities as they have characteristics similar to those of bonds and securitised debt instruments. This solution takes into consideration the implementing legislation already adopted by most Member States. Moreover considering the different classes of instruments negotiated on national money markets, it appeared desirable to leave to Member States the power to identify the instruments which fulfil the conditions for being considered eligible money market instruments for UCITS."

In this respect, Recital 4 of the initial proposal stated that *"Member States should have the option of choosing the list of eligible money market instruments on the basis of objective criteria to take account of the existing structural differences in the money markets of different countries."* This sentence was proposed for insertion into Recital 4 but disappeared before the amended UCITS Directive was adopted. The UCITS Directive now specifies that money market instruments cover *"those transferable instruments which are normally not traded on regulated markets but dealt in on the money market, for example treasury and local authority bills, certificates of deposit, commercial paper, medium term notes and bankers' acceptances"*. They are *"instruments normally dealt in on the money market which are liquid, and have a value which can be accurately determined at any time"*.⁴⁷

3.3.2 The possibility for UCITS to invest in money market instruments

To take into account market developments, the Commission considered it desirable to modernise UCITS, in particular by extending the list of assets in which an undertaking for collective investment

⁴⁵ European Parliament and Council Directive of 21 January 2002 amending Council directive 85/611/EEC on the co-ordination of laws, regulations and administrative provisions relating to UCITS (with regard to investments of UCITS) published in the EC OJ of 13 February 2002 (L 41/35). Member States shall adopt the laws, regulations and administrative provisions necessary for them to comply with the directive before August 2003.

⁴⁶ "Transferable securities" are defined in the UCITS Directive as *"shares in companies and other securities equivalent to shares in companies ("shares"); bonds and other forms of securitised debt ("debt securities"), any other negotiable securities which carry the right to acquire any such transferable securities by subscription or exchange excluding the techniques and instruments referred to in Article 21"*.

⁴⁷ Article 1(9) of the UCITS Directive.

may invest, such as other collective investment undertakings, deposits, financial derivative instruments and money market instruments.⁴⁸ Once the amendments are implemented in the legislation of Member States, the amended UCITS Directive will enable a unit trust or an investment company to invest in money market instruments as well as transferable securities.

This express reference to money market instruments makes clear that such instruments fall within the scope of the UCITS Directive provided they comply with the requirements of Article 19. Moreover, the 10% rule limiting UCITS investments in certain types of transferable securities or money market instruments⁴⁹ should be lifted under certain circumstances.

According to Article 19 of the amended UCITS directive, three main cases may be distinguished for the investments of UCITS in money market instruments. UCITS can invest in money market instruments without any restriction in the following situations:

- first case: money market instruments admitted to or dealt in on a regulated market within the meaning of Article 1(3) of the ISD;⁵⁰
- second case: money market instruments other than those dealt in on a regulated market, which fall under Article 1(9) of the UCITS Directive, if they fulfil certain conditions.⁵¹ Article 1(9) of the UCITS Directive refers to money market instruments defined as instruments normally dealt in on the money market which are liquid and have a value that can be accurately determined at any time.

As regards money market instruments that are not dealt in on a regulated market⁵² (second case), UCITS can invest without restriction:

- if the issuer of such instruments is itself regulated for the purpose of protecting investors and savings, and
- provided that:
 - the instruments are issued or guaranteed by a public issuer (including the ECB, central banks, or EIB) or

⁴⁸ The European Commission will review the investment rules for UCITS three years after the directive comes into force. This review will include in particular the rules applicable to money market instruments.

⁴⁹ Article 19 (2) (a) of the (current and amended) UCITS Directive.

⁵⁰ Article 19 (1) (a), (b), (c) of the UCITS Directive, which also states: "*and/or dealt in on another regulated market in a Member State which operates regularly and is recognised and open to the public and/or admitted to official listing on a stock exchange in a non-Member State or dealt in on another regulated market in a non-Member State which operates regularly and is recognised and open to the public.*"

⁵¹ Article 19 (1) (h).

⁵² Which is most often the case since these instruments are not dealt in on a regulated market. Moreover, there are no domestic markets for money market instruments in the EU which qualify as "regulated markets" within the meaning of the ISD. Recital 6 of the UCITS amended directive establishes in this respect that the concept of regulated market in the UCITS directive corresponds to the concept used in the ISD.

- the instruments are issued and/or guaranteed by specifically defined issuers where investor protection is ensured (for instance, issued by an undertaking with securities that are dealt in on regulated markets or by an establishment subject to prudential supervision, i.e. a credit institution or an investment firm).^{53 54}

In other situations (i.e. apart from those referred to in Article 19 (1) of the UCITS Directive meaning the first and second cases above), a UCITS may invest a maximum of 10% of its assets in transferable securities and money market instruments. This can be regarded as a third case.⁵⁵ Concerning this 10% rule (the third case),⁵⁶ it remains to be seen which categories of money market instruments will be considered as less secure and covered by this limitation under the national legislation implementing the amended UCITS Directive.⁵⁷

CONSOLIDATED VERSION OF ARTICLE 19 OF THE UCITS DIRECTIVE

Section V

Obligations concerning the investment policies of UCITS

Article 19

1. The investments of a unit trust or of an investment company must consist solely of:
 - (a) transferable securities and money market instruments admitted to or dealt in on a regulated market within the meaning of Article 1 (13) of Directive 93/22/EEC *; and/or
 - (b) transferable securities and money market instruments dealt in on another regulated market in a Member State which operates regularly and is recognised and open to the public and/or,
 - (c) transferable securities and money market instruments admitted to official listing on a stock exchange in a non-member State or dealt in on another regulated market in a non-member State which operates regularly and is recognised and open to the public provided that the choice of stock exchange or market has been approved by the competent authorities or is provided for in law or the fund rules or the investment companies instruments of incorporation; and/or
 - (d) recently issued transferable securities, provided that:

* Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ L 141, 11.6.1993, p. 27). Directive as last amended by Directive 2000/64/EC (OJ L 290, 17.11.2000, p. 27)

⁵³ Article 19 (1) (h).

⁵⁴ The same rule will apply for securitisation vehicles issuing commercial paper (see Article 19(1)(h), fourth indent of the amended directive).

⁵⁵ Article 19 (2) (a).

⁵⁶ This 10% rule was already present in the former UCITS directive but only applied to transferable securities. However, it did not cover expressly money market instruments.

⁵⁷ The UCITS Commission Contact Committee may wish to further examine this question.

- the terms of issue include undertaking that application will be made for admission to official listing on a stock exchange or another regulated market which operates regularly and is recognised and open to the public, provided that the choice of stock exchange or market has been approved by the competent authorities or is provided for in law or the fund rules or the investment company's instruments of incorporation;
 - such admission is secured within a year of issue; and/or
- (e) units of UCITS authorised according to this Directive and/or other collective investment undertakings within the meaning of the first and second indent of Article 1(2), should they be situated in a Member State or not, provided that:
- such other collective investment undertakings are authorised under laws which provide that they are subject to supervision considered by the UCITS' competent authorities to be equivalent to that laid down in Community law, and that cooperation between authorities is sufficiently ensured
 - the level of protection for unitholders in the other collective investment undertakings is equivalent to that provided for unit-holders in a UCITS, and in particular that the rules on assets segregation, borrowing, lending, and uncovered sales of transferable securities and money market instruments are equivalent to the requirements of this Directive;
 - the business of the other collective investment undertakings is reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period,
 - no more than 10 % of the UCITS or the other collective investment undertaking assets, whose acquisition is contemplated can be according to its rules or instruments of incorporation invested in aggregate in units of other UCITS or other collective investment undertaking; and/or
- (f) deposits with credit institutions which are repayable on demand or have the right to be withdrawn and maturing in no more than twelve months provided that the credit institution has its registered office in a Member State or, if the registered office of the credit institution is situated in a non-Member State, provided that it is subject to prudential rules considered by the UCITS' competent authorities as equivalent to those laid down in Community law; and/or
- (g) financial derivative instruments including equivalent cash-settled instruments, dealt in on a regulated market referred to in subparagraphs (a) (b) and (c)- and/or financial derivative instruments dealt in over-the-counter ("OTC derivatives"), provided that:
- the underlying consists of instruments covered by Article 19 (1) financial indices, interest rates, foreign exchange rates or currencies in which the UCITS may invest according to its investment objectives as stated in the UCITS' fund rules or instruments of incorporation,
 - the counter parties to OTC derivative transactions are institutions subject to prudential supervision, and belonging to the categories approved by the UCITS' competent authorities, and
 - the OTC derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the UCITS' initiative; and/or
- (h) money market instruments other than those dealt in on a regulated market, which fall under Article 1 (9), if the issuer of such instruments is itself regulated for the purpose of protecting investors and savings, and provided that they are:
- issued or guaranteed by a central, regional or local authority, a central bank of a Member State, the European Central Bank, the European Union or the European Investment Bank, a non-Member State or, in the case of a Federal State, by one of the members making up the federation, or by a public international body to which one or more Member States belong, or
 - issued by an undertaking any securities of which are dealt in on regulated markets referred to in subparagraphs (a), (b) or (c), or
 - issued or guaranteed by an establishment subject to prudential supervision in accordance with criteria defined by Community law or by an establishment which is subject to and complies with prudential rules considered by the competent authorities to be at least as stringent as those laid down by Community law, or

- issued by other bodies belonging to the categories approved by the UCITS' competent authorities provided that investments in such instruments are subject to investor protection equivalent to that laid down in the first, the second or the third indent and provided that the issuer is a company whose capital and reserves amount to at least EUR 10 million and which presents and publishes its annual accounts in accordance with Council Directive 78/660/EEC, is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.
2. However:
 - (a) a UCITS may invest no more than 10% of its assets in transferable securities and money market instruments other than those referred to in paragraph 1;
 - (b) (deleted)
 - (c) an investment company may acquire movable and immovable property which is essential for the direct pursuit of its business;
 3. (deleted)
 4. Unit trusts and investment companies may hold ancillary liquid assets.

The debate concerning regulated versus unregulated markets has been particularly intense in the context of the comparison between domestic CP and euro CP markets. As we have noted, none of the domestic CP markets in the EU Member States, or the ECP market, is today qualified as a “regulated market” within the meaning of the ISD. Each of the legal regimes of the domestic CP markets provides a certain degree of regulation, but it is not certain whether such markets could come within the criteria established in the revised ISD. The situation today is that some domestic CP are considered within their own legal order as “regulated enough” to allow money market funds to acquire an unlimited amount of such commercial paper, while euro CP may only be accepted with a limitation of 10% of total investment. In general, the key issue would appear to be the specification of the standards that are needed to guarantee investor protection and market efficiency. Implementation of the amended UCITS Directive into national law should provide further guidance in this respect on the nature of the instruments covered by Article 19 and, in particular, whether the restrictions currently applicable to euro CP might be lifted and under which conditions. However, the EFMLG points to the risk that national implementing legislation may differ from one country to another, thus keeping in place an element that could leave the markets for short-term securities fragmented on national lines. In the conclusions to this Report, attention is drawn to this issue and uniform solutions across the EU are recommended.

4. The legal situation in EU Member States

Annexes I - III to this Report give an overview of the national legislation of the EU Member States⁵⁸ on CDs, CP and MTNs, respectively, with regard to ten different areas. This Chapter 4 summarises these findings with the emphasis on the euro area Member States. The ten areas covered are:

- (1) legal basis, which identifies the framework under which the financial instrument in question may be issued;
- (2) legal definitions, which clarify the way CDs, CPs and MTNs are defined legally, including the name and legal form that may be prescribed by the applicable rules;
- (3) issue, including the entities that may issue the financial instrument under consideration; any specific requirements for issue related to currency denomination; any minimum amount of the issue, minimum and/or maximum maturity or otherwise; and whether the instrument is issued in book-entry form;
- (4) rating, and whether there are any applicable rating requirements in the jurisdiction concerned with regard to the issue or the issuer;
- (5) investors and prospectuses, and whether there are rules to protect investors, including rules concerning disclosure of information and prospectus requirements with reference to the issue and/or the issuer, as well as relevant exemptions from such rules;
- (6) trading, and whether any rules concerning the trading of the financial instruments are being considered, including rules on listing, selling restrictions and buy-back possibilities for the issuer;
- (7) the nature of rights, which refers to the legal title of the initial holder of a financial instrument once issued; and focuses particularly, in case of a subsequent transfer of rights, on the proprietary rights of the subsequent holder;
- (8) procedures for clearing and settlement, including the terms and conditions applied by the relevant domestic and/or international central securities depository, if applicable;
- (9) taxation and stamp duty, including withholding tax and capital gains tax; and
- (10) regulatory and supervisory aspects, including identification of the competent authorities and their competencies; the scope of supervision with regard to the issuers, the issue and the trading

⁵⁸ And, for comparative purposes, the United States.

of the financial instruments under consideration; and regulatory requirements concerning licensing, registrations, notifications, reporting and sanctions in cases of non-compliance.

As further specified for CDs, CP and MTNs in the Annexes and in the following summaries, in each of these areas the applicable rules are country-specific and not the same throughout the EU. The instruments traded in the domestic markets and the applicable regimes have developed over time and the differences can most often be explained by reference to the respective market history and local traditions. Hence, the domestic short-term instruments are themselves different and are differently defined and the rules and regulatory regimes governing each domestic set of instruments (CD, CP and MTNs) are specific to the country and instrument concerned, even if these national rules also show similarities.

4.1 Certificates of deposit

In several countries specific laws contain rules for CDs, or explicit definitions of what constitutes a “certificate of deposit” as laid down in Codes, Decrees or Acts dealing with securities or financial matters in general. CDs as money-market instruments have been used for some time, but in countries with specific legislation, such legislation is relatively recent. Cases in point are Italy⁵⁹ and, to a certain extent, Belgium.⁶⁰

In countries with no specific laws, the use of CDs is commonly based on general contractual rules. Certificates of debt in writing, such as promissory notes or commercial certificates of obligation, have been the subject of legislation in several countries and, in the absence of specific provisions on CDs, these general contractual rules are taken to apply to such CDs.

In the instances where national law contains definitions of CDs, these are typically rather general in scope and do not necessarily set out exact criteria for determining what constitutes a CD. The common features for CDs include requirements that they should be debt instruments created for a limited period of time and, in many instances, issued by certain specified types of institutions. The legal definitions of certificates of deposit often include a reference to whether the time period is qualified as “short” or “medium”.

As far as the issue of CDs is concerned, this is an activity open only to credit institutions in most countries. Even where the issue of CDs is not restricted to credit institutions by statute, the issuing is nevertheless completely or almost completely carried out by credit institutions. Some countries set a minimum amount for the CD: the amount in question ranges from EUR 150,000 (France) through EUR 250,000 (Belgium) to a required minimum amount of EUR 454,000 (in the Netherlands). In general, it appears that countries that stipulate minimum amounts for CDs also have introduced

⁵⁹ The Banca d'Italia Circular 229 of 21 April 1999, *Istruzioni di vigilanza per le banche*.

⁶⁰ The law of 22 July 1991 on treasury bills and certificates of deposit is *lex specialis* in this area.

specific legislation for them, as opposed to the more generic instruments created under laws on promissory notes or contractual obligations.

The rating or listing of CDs is not compulsory in any country, although in one country (Finland) it is possible to list it on a stock exchange.

In most countries, the issuer of a CD must give the public information when the instrument in question is issued. Provisions on prospectuses may be found in *lex specialis* dealing with CDs, such as the Belgian Law of 22 July 1991. General rules on prospectuses for financial instruments in national law⁶¹ may also apply directly to issue of certificates of deposit, including the possibility of exemptions under specific circumstances. Even in cases where no formal prospectus need be released, issuers are generally obliged to provide the public with sufficient information to enable the potential buyers to judge the soundness of the investment.

There is a general absence of specific rules on clearing and settlement of CDs. If the CDs are traded in an official secondary market, the national central securities depository may have an exclusive right to clear and settle securities traded in such a market. When such a monopoly on behalf of the national central securities depository does not exist, CDs are at any rate invariably eligible for clearing and settlement through the national or an international central securities depository.

Stamp duties are not levied on CDs, although capital gains tax and withholding tax may apply and differ from country to country. In most countries, the national financial supervisory authorities are competent to supervise the issuing and trading of CDs. This mandate arises from the role of the respective national supervisory authority in overseeing and ensuring the proper functioning of the financial market or from their role in supervising the issuers (when the issuers are within their scope of supervision, as is normally the case with credit institutions). For instance, Banque de France is responsible for the supervision of the TCN market (market for the “Titres de Créances Négociables”) in France. In one country (Belgium), *lex specialis* in the form of a Royal Decree lays down several tasks for the Banking Commission (CBF) as supervisory authority over issue and trading of, among other things, CDs.

4.2 Commercial paper

In the field of CP, the countries under review, including the euro CP market in the UK,⁶² have very different levels of regulation. Market practices also differ from country to country. While some countries have a specific legal basis for CP in particular (Belgium, France and Ireland), others take as their legal basis general securities and safe custody regulations and general rules of civil law (Germany, Spain, Italy, the Netherlands, Finland). In yet other countries, little or no specific legal

⁶¹ For instance, the German Prospectus Act, *Verkaufsprospektgesetz* or the Austrian Capital Markets Act.

⁶² See Chapters 5.3 – 5.4 below.

basis exist (Greece, Luxembourg). As a consequence, CP is defined rather differently in national law. In most jurisdictions, CP is recognised as a type of security issued by corporates for a maturity of one year or less. In some cases, the maturity may be longer (up to three years or more) or the issue may be limited to non-financial corporates. Some public authorities may also issue CP.

The issue of CP can be in dematerialised form. In some jurisdictions, a minimum amount is set for an issue (Belgium, France, Ireland, Italy, the Netherlands), whilst in others, commercial practice indicates a certain minimum amount (Germany, Finland, Spain). Rating is common, except in Portugal, but not compulsory. Almost all jurisdictions impose information obligations for the issue, in many cases in the form of a duty to publish a prospectus. Under certain conditions, the issuer is in some countries exempt from this obligation (Austria, Germany, Luxembourg, the Netherlands). Prospectuses must generally provide all economic and financial details relevant to the issue, and must be updated (Luxembourg, Finland). Trading takes place on a regulated market or over-the-counter (OTC), although in some countries traders do not usually seek admission to a regulated market due to the short-term nature of the paper (Germany, Austria).

In most jurisdictions general civil law governs the nature of rights. In some countries, additional non-mandatory regulation covers guarantees provided for CP (e.g. Belgium). Clearing and settlement is also covered by general civil law, general securities and by safe custody laws. In all jurisdictions central securities depository can be used. Taxation varies greatly from country to country. In some jurisdictions there may be a stamp duty, withholding tax or capital gains tax, or any combination of these.

In general, the issue of CP is directly supervised by the central bank or subject to its supervisory guidance (France, Ireland, Italy; and also, indirectly, Finland) or that of the designated securities supervision agency (Spain, Luxembourg, the Netherlands, Austria). CP markets as such may be non-regulated, although they may then instead be covered indirectly in the general regulation and supervision of the financial markets and the conduct of business of financial institutions by the competent authorities (United Kingdom, Belgium, Germany).

4.3 Medium-term notes

In general, MTNs differ from CDs and CPs in that there are several EU jurisdictions where MTNs are neither defined nor provided for in the relevant laws and decrees. To a certain extent the legislation instead allows for the use of other generic terms of debt instruments. MTNs qualify as debt instruments and, as a result, may not need a specific definition or other provision. In some cases, explicit provisions have been introduced in the laws of countries where the legislation on securities and financial instruments has been reformed in recent years. In France, MTNs are covered as a sub-category by the definition of negotiable debt securities ('Titres de Créances Négociables', TCN), and specific rules apply.

The International Primary Markets Association (IPMA) has elaborated Recommendations Applicable to Medium-Term Note Programmes that are agreed by major banks which act as lead managers in the issue of MTNs. The IPMA recommendations apply to all medium-term note programmes and debt issue programmes regardless of the terms used, where these debt instruments are to be placed in the international capital markets. The IPMA recommendations have in effect harmonised a part of the process of bond issue. This has been the case in particular with regard to the duties of the lead manager; conditions precedent that the issuer must fulfil; the form and standard clauses found in the invitation telex or the subscription agreement and the pricing supplement. IPMA Members are presumed to apply the IPMA recommendations. Other market participants may make the IPMA recommendations part of the agreements by referring to those recommendations. The IPMA recommendations apply irrespective of the law governing the terms and conditions of the MTNs. In fact, the standard practice for euro debt issue programs governed by English or German law is that the IPMA recommendations apply.

In several countries, MTNs are covered by the general provisions on commercial paper or debt instruments in bearer form and, for legal purposes, are considered to represent a particular form of commercial paper with longer maturity. In some instances, *lex specialis* provide for instruments that display some of the characteristics of MTNs in terms of maturity, without reference in the law to the concept of MTNs.⁶³ In one country, there is no legal definition of MTNs, but instead they may be considered as “atypical instruments” (Italy).

Banks, corporations and in many cases also entities in the public sector are usual issuers of MTNs. In countries with specific legislation for MTNs, or instruments akin to MTNs, (France and Portugal), the law sets out definitions of what entities may issue such instruments. It may also state requirements for the minimum unit value of MTNs (EUR 150,000 in France) or the minimum net assets to be held by the issuing credit institution (EUR 2.5 million in Portugal).

MTNs, or comparable instruments under national law, do not seem to be subject to any compulsory rules on rating or listing, although in most cases it is possible to rate and/or list an MTN. However, national legislation commonly requires a prospectus to be released with the issue of MTNs, with possible exemptions in specific cases. Under some jurisdictions the prospectus must conform to certain formal requirements (Germany, Spain, Austria, Portugal, Sweden), whereas in others the law only demands a minimum amount of information (Ireland, Finland). Some countries lack all such requirements and MTNs can therefore be issued without any prospectus (France, Italy).

In most countries, trading MTNs on a regulated market is possible even if not mandatory. Certain formalities may have to be met if the trading takes place outside a regulated market (in Spain, for instance, where such a transaction must involve a public notary or a certified securities agent).

⁶³ See the Portuguese *obrigações de caixa*.

Where there are no specific rules on the clearing and settlement of MTNs, they would be subject to the general rules of securities and safe custody laws and the terms and conditions of the national or international central securities depository, provided the MTNs are eligible for deposit in such centres.

According to the information received so far, stamp duties are generally not levied on MTNs, although capital gains tax and withholding tax may apply and may differ from country to country. In most countries the national financial supervisory authorities are competent to supervise the issue and trading of MTNs. This mandate generally arises from the role of the respective national supervisory authority in overseeing and ensuring the proper functioning of the financial market or from their role in supervising the issuers (when the issuers are within their scope of supervision, as is normal with credit institutions).⁶⁴

5. Commercial paper markets – Case studies and comparison

5.1 Domestic commercial paper – The French commercial paper market⁶⁵

The French commercial paper market is one of the major domestic CP markets in the euro area.⁶⁶ The outstanding amount in the French market (issued in all currencies by domestic and non-domestic issuers) stabilised around EUR 73 billion between the end of June and the end of August 2002.

These levels are in line with those of autumn 2000 and were reached because of a 20% contraction registered between March and June 2002. That was the first major contraction in the size of the French market, which more than doubled between January 1999 and June 2001 and then stabilised in the EUR 80-90 billion range, with a peak of EUR 90.2 billion at the end of November 2001.

⁶⁴ Until the end of 1998, some national central banks, for example Deutsche Bundesbank, expected the issue of bonds denominated in the national currency for which they were responsible to be carried out only with their approval, according to the so-called 'anchor principle' ("*Verankerungsprinzip*"). Some other countries applied the same 'anchor' principle (i.e. Austria, Switzerland, Spain). The anchor principle, which concerned the issue of debt instruments, in particular MTNs, has not been retained by the ECB and therefore is no longer applicable to euro-denominated securities placed in the euro area after the introduction of the euro at the start of 1999.

⁶⁵ Data source: Banque de France. The data presented in this section refer to issues in all currencies by residents and non-residents of the respective country, while the upper part of the table presented in Chapter 2.1 of the Report refers to euro-denominated issues only. Furthermore, euro-denominated issues by non-euro area residents are summarised in the last line of the table ("non-residents of the euro area").

⁶⁶ The origin of the French CP market dates back to the prohibition based on a regulatory decision of 1969 for banks to remunerate sight deposits. This decision led banks to intermediate between depositors and the money market, where remuneration was permitted. The second most important EU domestic commercial paper market is the German CP market, where the outstanding amount, issued in euro by domestic and non-domestic non-banks, was EUR 25.7 billion at the end of July 2002 (data source: Deutsche Bundesbank).

The Italian market is another example of a domestic CP market (for the general historic background to the development of the Italian market, see also Annex V). The Law #43 of 1994, which introduced an instrument equivalent to the commercial paper, the so-called *cambiale finanziaria*, is being amended by the Italian Parliament. The goal of the new law is to create an Italian CP market. One of the major amendments under discussion refers to the extension of the admissible maturity of an instrument, to 1-18 months from the current 3-12 month range. However, Italian legislators seem to have in mind small and medium enterprises as the potential CP issuers. This would be a major difference with respect to both the French and the euro CP markets, where large highly rated issuers are the typical market agents.

It is interesting to notice that the contraction of the outstanding registered in the second quarter of 2002 was not mirrored in the gross weekly issuance, which continued to hover around the average value of EUR 19 billion. This apparent contradiction is explained by the contemporaneous shortening of the initial maturity of the newly issued commercial paper. In fact, the issues with an initial maturity between 1 and 9 days increased their weight in the total issuance in the week and reached a peak of more than 60% in the week ending on 21 June. Another interesting indicator of that phenomenon is the ratio between the issuance of the previous 4 weeks and the outstanding at the end of the 4 weeks: between April and June 2002 it increased by 50%.

The reduction of the outstanding of few major issuers explains a significant part of the contraction of the size of the French CP market. In some cases, (e.g. Alcatel S.A.,⁶⁷ Fiat France S.A.,⁶⁸ Vivendi Universal and France Télécom⁶⁹) the reduction in issuance is clearly connected to the company's downgrading. Vivendi represents one of the most significant examples. The combined outstanding amount of Vivendi Universal and Vivendi Environnement at the end of March 2002 was more than EUR 4.5 billion (down from the maximum of more than EUR 6.5 billion registered in June 2001). The months following March 2002 saw the downgrading of Universal (from A-2 to A-3) and the collapse of its outstanding CP to virtually zero in July 2002. Environnement's CP halved between June and July, even though the company had not been downgraded (however, the Universal's difficulties clearly played a role). In August 2002 the combined outstanding of Universal and Environnement was slightly above EUR 1 billion. In other cases (e.g. General Electric Capital Corporation and Morgan Stanley Dean Witter) issuers decided voluntarily to reduce their reliance on the CP market. In some cases the willingness to lengthen the maturity profile of the company's debt was the major trigger of such a decision.

These developments can be compared with the second most important EU domestic CP market, the German CP market. The total outstanding in the German CP market tripled between May 1999 and October 2001, when the peak of more than EUR 30 billion was reached (issues in all currencies by domestic and non-domestic issuers). The first half of 2002 was characterised by a 15% contraction of the market size deriving from the reduction of the outstanding issued by domestic non-banks (-20% between January and July 2002) and the rather stable outstanding CP issued by foreign non-banks.

All in all, the contraction on the French and German markets was much smaller than that experienced in the US CP market (-50% between August 2000 and July 2002).

⁶⁷ In January 2002 the short-term rating for Alcatel S.A. was A-2, P-2 (S&P and Moody's). By July 2002 the ratings had fallen to B, NP, respectively. The outstanding of Alcatel's CP was circa EUR 1 billion at the end of 2001, while at the end of July 2002 there was only EUR 26 million worth of Alcatel's CP outstanding.

⁶⁸ Between the April and July 2002 the rating of Fiat France S.A. decreased from A-3, P-2 to A-3, P-3 and the outstanding from circa EUR 1.5 billion to EUR 250 million.

⁶⁹ Between the end of March and July 2002 the ratings of France Télécom decreased from A-2, P-2, F-2 to A-3, P-3, F-3 with a negative outlook (Moody's). Over the same period the outstanding amount of France Télécom's CP decreased from more than EUR 2.5 billion to circa EUR 800 million.

On 23 August 2002 the two major issuers on the French market were General Electric Capital Corporation (GECC) and Morgan Stanley Dean Witter (MSDW). The outstanding amount issued by the former was EUR 8.2 billion, while that issued by the latter was almost EUR 5.5 billion. GECC's issue for the week of 23 August was EUR 7.4 billion, while MSDW's was slightly more than EUR 700 million. These facts corroborate the idea that the French CP market is not a "strictly domestic" market and point instead to the relevance of foreign issuers in euro-denominated securities.⁷⁰

The breakdown by category of initial subscriber of the French commercial paper shows a relatively stable pattern. Resident credit institutions and similar entities usually purchase about 60% of the newly issued paper, resident UCITS about 30%, resident industrial and commercial companies and sole proprietorships about 5-10%. Non residents outside the euro area (including the French overseas territories) subscribe to about 2%. Since it is difficult to identify the final investors, it is also difficult to assess how far the investor base of French CP represents international interests.

The amount of French CP issued in US dollar, pound sterling, Swiss franc and Japanese Yen is negligible if compared to the total outstanding amount.

5.2 Legal aspects of the French commercial paper market

Article L. 213-1 of the Financial and Monetary Code ("the Code") defines negotiable debt securities (Titres de Créances Négociables or TCN) under French law as "*negotiable debt securities issued at the initiative of the issuer and traded on a regulated market or over the counter which each represent a fixed term debt*".⁷¹ This definition covers in particular certificates of deposit (CDs), commercial paper (CP)⁷² and Medium-Term Notes (MTNs). The market for TCN was created in 1985 at the initiative of the French Treasury and results from the dissociation within the money market of the inter-banking market and of the negotiable debt securities market. This market underwent a substantial development in 1992 and an important regulatory reform in 1998. The main purposes were:

- to open the market to the whole range of economic agents while keeping distinctions according to the status of different issuers and the maturity of securities; and
- to deregulate the terms concerning interest provisions.

Conditions of issue of these instruments are defined in Articles L. 213-2 to 213-4 of the Code and by Decrees/Ministerial Orders and Regulations of the Comité de la Réglementation bancaire et financière

⁷⁰ See also Chapter 5.7.

⁷¹ TCN are defined as "*titres émis au gré de l'émetteur, négociables sur un marché réglementé ou de gré à gré, qui représentent chacun un droit de créance pour une durée déterminée*".

⁷² Billets de trésorerie.

(CRBF).⁷³ While some general principles are applicable to all kinds of TCN, there are some specific rules for the issue of CD and CP by credit institutions and investment firms, respectively. Similarly, other rules apply for negotiable debt securities issued by non-financial entities (CP and MTN issued by industrial and commercial undertakings).⁷⁴

Despite the definition of TCN in the Code (see above) and the existence of a set of detailed rules organising the market, the TCN market was not qualified as a "regulated market" within the French law of 1996 on the modernisation of financial activities implementing the Investment Services Directive. Indeed, several characteristics of regulated markets do not apply to the TCN market. Firstly, there is no market undertaking, i.e. no commercial company in charge of the management and establishing of rules organising the market (conditions of access to the market and to listing, organisation and suspension of transactions, registration and publicity). Secondly, TCN are not listed. Thirdly, this is a market mainly based on bilateral relations between investors and issuers. There is no intermediation obligation since the trading of TCN does not exclusively belong to investment firms.

The TCN market is characterised by its flexibility and liquidity. Issuers greatly value the ability to issue securities for a period of one day with the real-time treatment of transactions on value date in the clearing systems. The terms relating to interest have been deregulated and are freely determined by the issuers. Another element is that the issue of TCN falls within the general authority of the Chairman of the Board or of the Managing Director of French issuers (or any other duly authorised person acting by delegation). For instance, the issue of TCN by a French company requires the approval of neither the shareholders, nor the board of directors. In addition, once the issuer has fulfilled the information requirements (by submitting an information memorandum to the Banque de France), the issue of TCN merely requires a signed confirmation at the date of subscription. CP must have a fixed maturity date, an initial maturity of at least one day and a unit value equivalent to at least EUR 150.000. Their maximum maturity must not exceed one year. They are issued in particular by investment firms, public sector companies, economic interest groupings, Community institutions and international organisations of which France is a member. Companies making public offerings, resident or non-resident (with at least two years of activity) are also entitled to issue CP. Since the law on New Economic Regulations of 15 May 2001 came into effect, local public bodies have also been authorised to issue CP. Remuneration of these instruments is freely determined by the issuer. It is therefore possible to issue fixed, floating or index-linked CP. Issuers need to obtain the Banque de France's prior approval only when the remuneration varies according to an index that is linked to a rate other than a usual interbank rate, money market rate or bond market rate. CP can be issued as discount paper, but also at par or at premium.

⁷³ See Decree n°92-137 of 13 February 1992 regarding TCN, as amended by Decree n°98-1316 of 31 December 1998; Regulation of CRBF n°98-08 of 7 December 1998 and Ministerial Order of 31 December 1998.

⁷⁴ See also Annexes I - III.

As for CDs and MTNs, dematerialisation of CP has been compulsory since the law of 26 July 1991 came into force.⁷⁵ They are issued in bearer form and recorded in the books of authorised intermediaries. Some specific provisions governing domiciliation of TCN are contained in the General Regulations of the Conseil des Marchés Financiers.⁷⁶ Before any issue of TCN, the issuer must complete a written agreement between the issuer and a domiciling institution (“établissement domiciliataire”) responsible for ensuring the regularity of the conditions of issue. Authorised domiciling institutions are credit institutions, investment firms established in France and the Caisse des Dépôts. The domiciling institution is responsible, among other things, for ensuring that the amount of the issue corresponds exactly to the instructions received from the issuer and must report the issue’s characteristics to the issuer in the manner specified by the said agreement. The domiciling institution must act as transfer and paying agent for the issue and must fulfil the requirements for statistical reporting to the Banque de France set out in the previously mentioned ministerial order and the CRBF regulations.

If an issuer decides to have the account of an issue of TCN held at a central depository,⁷⁷ the issuer must inform the central depository of which domiciling institution it has appointed to transmit its instructions. The central depository must open a separate account for each issue. The central depository is responsible for ensuring that the number of securities issued is equal to the number of securities recorded on its books in the names of the custody account-keepers. If an issuer decides not to have the account of an issue of TCN held at a central depository, its domiciling institution is responsible for ensuring that the number of securities issued is equal to the number of securities recorded on its books in the names of the other custody account-keepers.

Banque de France is the competent authority supervising the market.⁷⁸ Besides controlling whether TCN issuers comply with applicable regulations, Banque de France has the power to suspend or prohibit issues by an issuer that fails to comply with the conditions laid down for such issue. The issuers of TCN benefit from the derogation to submit a prospectus, but need to fulfil certain disclosure obligations concerning their economic and financial situation and their issuing programme. Banque de France is informed of any new entrant on the market and receives the "Dossier de présentation financière" (Information Memorandum) which issuers must submit for approval at least 15 days before the first issue and must update each year.

Although a credit rating is not compulsory, if one is obtained it must be given by a rating agency named in the list of the French Ministry of Economy and Finance. Rated issuers are exempt from applying for a visa to the Commission des Opérations de Bourse COB and benefit from simplified

⁷⁵ Law n°91-716 of 26 July 1991, Article 19 II and VIII. See also Article L.213-2 of the Code.

⁷⁶ Articles 6.3.10 to 6.3.12, Title 6, Custody and account-keeping of financial instruments.

⁷⁷ All TCN which are to be cleared through a central depository must be cleared through Euroclear France. According to the Banque de France, in 2000, 90 % of the TCN were cleared through Euroclear France.

⁷⁸ See in particular Article 6 of the ministerial order of 31 December 1998 and Article 9 of the CRBF Regulation n°98-08 of 7 December 1998

disclosure requirements. Non-rated TCN programmes must obtain the visa of the COB and the Information Memorandum must be submitted to the COB one month before the first issue (with a copy to the Banque de France). Trading and placing may be performed in France or abroad by credit institutions or investment firms provided that they are licensed to carry out placement activities in the relevant jurisdiction. Transparency of the market is ensured by the legal statistical reporting obligations on issuers and domiciling institutions. Using the information collected, Banque de France publishes on its website the monthly "Cahier des TCN" and the weekly statistics on the TCN market.⁷⁹

5.3 The euro commercial paper market⁸⁰

The euro commercial paper (ECP) market emerged in the early 1980s as an offshoot of underwritten Note Issuance Facilities (NIFs) and was characterised by US dollar-based uncommitted programmes with a small group of intermediaries acting as dealers for each programme. ECP did not comply with SEC exemptions in the USA and could not, therefore, be sold to US investors. Since then, the ECP market has developed into a multi-currency short-term market, which largely absorbed the sterling domestic market. London-based dealers distribute ECP around the world in contrast to most other major CP markets that are largely focused on domestic issuers and investors. The ECP market is international in terms of issuers, investors and currencies. English law governs most ECP programmes.

In dollar terms, the monthly gross issuance on the ECP market reached its historical maximum of more than USD 292 billion in July 2002. This and other figures for the ECP market include both corporate and bank issuers.⁸¹ The corporate segment represents approximately 1/3 of the total ECP market. Between November 2000 and August 2002 the ECP market grew by 33% in dollar terms. Over the same period the number of issues grew by 7.2% to 8,672, slightly down from the maximum of 8,716 registered in July 2002. It would thus seem that the contraction observed on the US CP market⁸² during 2001 and in the first half of 2002, which was partially mirrored by the French and German domestic markets in the first half of 2002, did not occur on the ECP market. Such a conclusion should, however, be taken with a pinch of salt. In fact, the market size is traditionally measured in two different ways in the two groups of markets. In the French, German and US CP markets it is usually measured by the amount outstanding on a given date (typically the end of the week or of the month), while in the ECP market the gross monthly issuance is used and data for the outstanding at a given point in time are not available. The two sets of data are thus not comparable. The growing trend of the gross monthly issuance clearly indicates the current strength of the ECP market. On the other hand, the reduction of the outstanding amounts observed in France, Germany and, above all, in the US is an

⁷⁹ On 11 July 2002 the French Minister of Economy and Finance publicly announced that some amendments to the rules applicable to CP are under preparation.

⁸⁰ Data source: Euroclear.

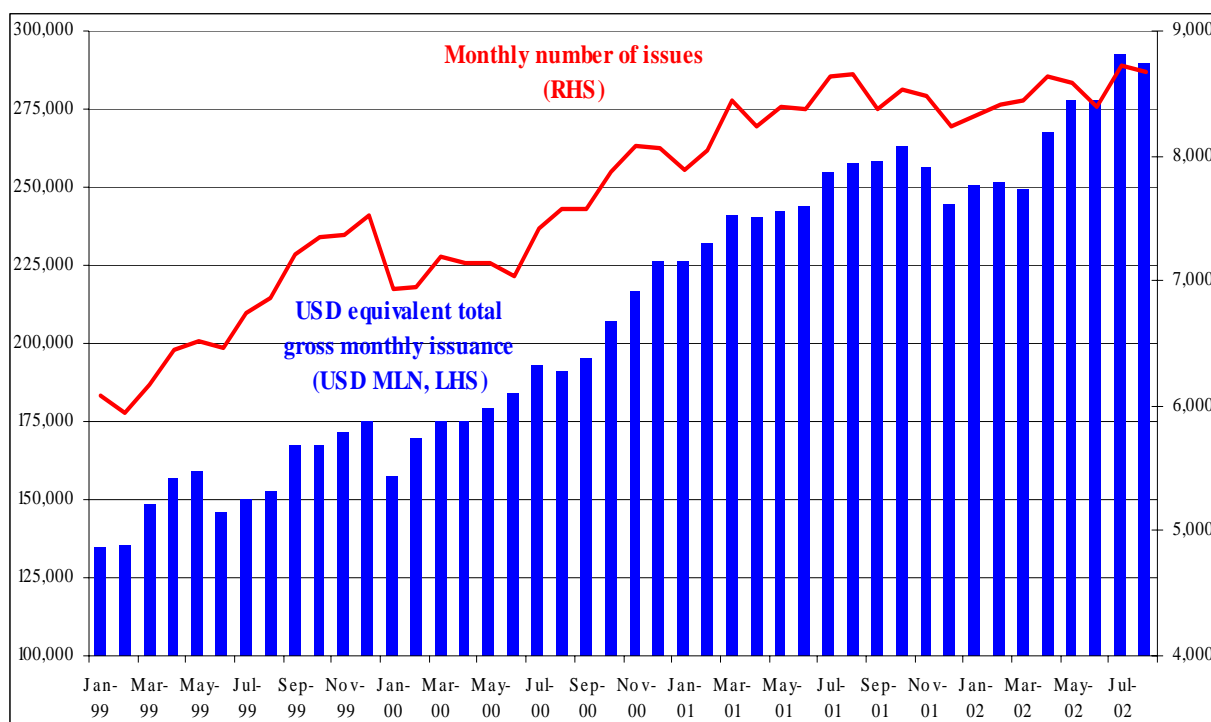
⁸¹ The figures on the French CP market presented in Chapter 5.1 only include non-bank issuers.

⁸² Here and in what follows we refer to the segment of the US CP market tapped by non-financial issuers.

unquestionable indicator of the reduction of market size, even though the weekly or monthly issuance may have remained rather stable.

The explanation of the different performance of the ECP market is likely to be related to its wider issuer base. In fact, the French, German and US CP markets are tapped only by non-banks, while the ECP market is tapped by non-financial institutions as well as banks and public authorities. Such an interpretation is corroborated by the fact that the segment of the US CP market tapped by financial issuers showed a stable pattern while the non-financial segment collapsed and the French CD market continued its growing trend also in 2002 while the CP market contracted. All in all, the different nature of the issuers on the ECP market compared with the other national markets makes the comparison particularly arduous.

Size of the ECP market⁸³



Since January 1999 the sum of US dollar and euro denominated ECP has represented about 75% of the ECP market size (measured by the total gross monthly issuance). In terms of issuance the US dollar has always been the major currency of denomination of ECP, while in August 2002 for the first time the number of euro-denominated issues was larger than the number of dollar-denominated issues.

⁸³ Source: Euroclear.

The dollar market share has been declining from almost 60% in January 1999 (when the gross monthly issuance was USD 79 billion) to the historical minimum of slightly less than 38.6% in August 2002 (when the gross monthly issuance was USD 112 billion). Since the fourth quarter of 2000 the gross monthly issuance of dollar-denominated ECP stabilised around USD 110 billion. Dollar-denominated issues are in general slightly larger than the average, while euro denominated issues tend to be in line with the average.

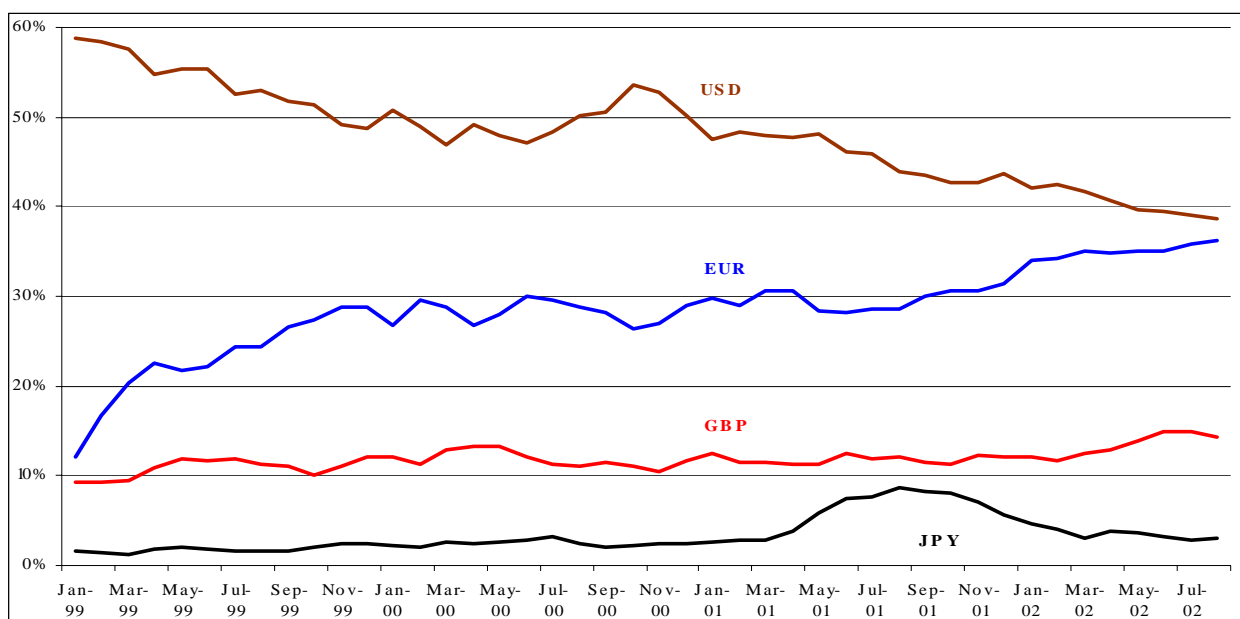
The euro market share has been growing rapidly since January 1999. In April 2002 the gross monthly issuance of euro denominated ECP passed for the first time the EUR 100 billion threshold, thus representing almost 35% of the total gross monthly issuance. Also in absolute terms, the euro denominated ECP has steadily increased since January 1999 when the euro-denominated outstanding sum was only EUR 14 billion, or slightly more than 12% of the total. The August 2002 figure for the euro market share, 36.67%, was the historical maximum and confirmed the growing trend.

The share of pound sterling issues has been hovering between 9% and 15% of the total since January 1999. In July 2002 it reached the maximum in both absolute and relative terms since January 1999, i.e. GBP 28 billion and 15% of the total. August 2002 showed a small contraction.

The Swiss franc was the fourth most relevant currency in the ECP market in August 2002 with a market share of 3.9% and a gross monthly issuance of almost CHF 17 billion. The level of the franc market share has been roughly constant since August 2001 and has always floated within the 2-5% range since January 1999.

In August 2001 ECP issues denominated in yen posted a maximum both in relative (8.7% of the total outstanding amount) and in absolute terms (JPY 2,670 billion). However, after that peak the decline has been steady and in August 2002 the gross monthly issuance of yen-denominated ECP was JPY 1,260 billion, i.e. 3.7% of the total gross monthly issuance. The zero interest rate policy, and the subsequent increased interest in A2/P2 instruments, appears to be the major driving force behind the boom in yen issue registered in 2001.

Currency breakdown of the gross monthly issuance on the ECP market⁸⁴



| Currency | Gross monthly issuance (MLN, August 2002) | USD equivalent (MLN) | % | Number of issues | % |
|--------------|---|----------------------|--------|------------------|--------|
| AUD | 12,542 | 6,925 | 2.39% | 374 | 4.31% |
| CAD | 990 | 635 | 0.22% | 79 | 0.91% |
| CHF | 16,640 | 11,134 | 3.85% | 448 | 5.17% |
| CZK | 860 | 28 | 0.01% | 1 | 0.01% |
| EUR | 106,464 | 104,675 | 36.18% | 3,180 | 36.67% |
| GBP | 26,642 | 41,236 | 14.25% | 1,125 | 12.97% |
| HKD | 29,920 | 3,836 | 1.33% | 199 | 2.29% |
| HRK | 150 | 20 | 0.01% | 1 | 0.01% |
| JPY | 1,040,302 | 8,787 | 3.04% | 208 | 2.40% |
| NOK | 640 | 85 | 0.03% | 3 | 0.03% |
| NZD | 223 | 104 | 0.04% | 10 | 0.12% |
| SEK | 2,170 | 233 | 0.08% | 4 | 0.05% |
| USD | 111,632 | 111,632 | 38.58% | 3,040 | 35.06% |
| Total | | 289,330 | | 8,672 | |

⁸⁴ Source: Euroclear. August 2002.

On 21 May 2002 Euroclear, Clearstream International and The Depository Trust & Clearing Corporation (DTCC)⁸⁵ announced the launch of a new service that automates the pre-issue information processing and ISIN allocation for new issues of ECP and related money-market instruments.

The new service, called European Pre-Issuance Messaging (EPIM), is a central messaging hub, linking the parties involved in the issue of European commercial paper, including banks, dealers, issuing and paying agents, securities depositories and numbering agencies. EPIM is based on a service developed by DTCC's depository and launched in the United States in 1999 and represents one step forward to achieving full straight-through processing in the European commercial paper marketplace.

Where the relevant settlement system is Euroclear France, the typical EPIM transaction works as follows: the dealer sends electronic trade data to the Issuing and Paying Agent (IPA) via a hub in New York. The IPA completes and validates the data and sends a coding request to the settlement system, which allocates an ISIN, and then sends it to both the dealer and the IPA. To complement EPIM, RGV (Euroclear France's real-time settlement system) automates all the subsequent communication between the dealer and the IPA. To simplify and speed up the issue process for issuing agents, RGV integrates all the stages of the process into one transaction. So the agent sends one instruction to RGV, which then allocates an ISIN code, issues the securities and settles their receipts against payment by the investors or their agents.

Same-day securities can be issued to counterparties with RGV accounts as late as 5 p.m. (CET), and to counterparties with accounts at Euroclear Bank until 1.30 p.m. (CET). Overnight securities can be issued to all Euroclear group clients.

⁸⁵ Short description of recent developments of these organisations:

Euroclear is the Brussels-based settlement system for domestic and international securities transactions, covering both bonds and equities. Euroclear is market owned and governed by its main users and provides securities services to financial institutions located in more than 80 countries. Euroclear also acts as the CSD for all French and Dutch securities and Irish government bonds, a role that will soon be extended to all Belgian securities. The value of transactions settled by Euroclear in 2001 was more than EUR 130 trillion, while more than EUR 8.2 trillion of client assets are held in custody. Euroclear Bank is rated AA+ by S&P and Fitch. In July 2002 Euroclear and the London-based CREST Co., the main U.K. depository, announced a merger; the resulting entity will be called Euroclear and be based in Brussels, and will become the most important depository of Europe for both equities and bonds.

Clearstream International is the Luxembourg-based clearing and settlement organisation offering a comprehensive service covering equities and bonds both domestic and cross-border. On 15 April 2002, Deutsche Börse AG, Clearstream International and Cedel International announced the successful completion of the voting process which enables Deutsche Börse AG to obtain 100% ownership of Clearstream International. Deutsche Börse AG and Clearstream anticipate that the integration will be completed by early 2003. Clearstream has over EUR 7.46 trillion of assets under custody and handled in excess of 118.9 million transactions in 2001. Clearstream Banking Luxembourg is rated AA+ by S&P and Fitch.

The Depository Trust & Clearing Corporation is a holding company whose subsidiaries provide clearance, settlement and custody infrastructure for equities, corporate and municipal bonds, unit investment trusts, government securities, and mortgage-backed securities, as well as trading in emerging market debt instruments. DTCC is also co-owner of a global joint venture with Thomson Financial, called Omgeo, providing institutional trade processing services. Through its subsidiaries, DTCC currently has about USD 23 trillion of assets in custody, including USD 1.5 trillion in securities from 84 countries outside the USA. It settled USD 252 trillion in trades in 2001. As a central counterparty, it also cleared and settled about 3.5 billion transactions worth USD 89 trillion in equity, corporate bond and municipal bond trades in 2001 and handled almost 16 million transactions in U.S. government securities worth USD 353 trillion. A DTCC subsidiary is the provider of information services and clearing for mutual funds and insurance products, processing transactions worth about USD 1.4 trillion in 2001. Both DTCC subsidiaries that have applied for a credit rating have received S&P's AAA.

Some ECP dealers and issuing and paying agents have already committed to use EPIM. Bank One and Goldman Sachs are the first customers to use the service, with JP Morgan Chase and Morgan Stanley to follow shortly after. Other organisations committed include Barclays Capital, Citibank NA, Credit Suisse First Boston, Deutsche Bank, HSBC, Lehman Brothers and UBS.

JP Morgan Chase London, in its capacity as Issuing and Paying Agent (IPA) and a Euroclear France sub-depositary, issued the first same-day ECP through Euroclear France on 8 August 2002. ECP transactions can now be processed through RGV, the French real-time settlement system, offering the same level of automation as for the French TCN (short-term paper) market.

There have also been some developments among the side of market associations relative to ECP. The Euro Commercial Paper Association (ECPA) is merging with the International Primary Markets Association (IPMA). IPMA was founded in 1984 as the association that represents international banks active in the underwriting and distribution of international debt and equity securities. IPMA governs bond issue in the Euromarket. It now has responsibility for primary markets in bonds, EMTNs and ECP. The two associations have been very active in promoting the growth of the ECP market.

5.4 Legal aspects of the ECP market

The legal basis for ECP under English law is physical bearer paper containing a promise to pay. By market convention, ECP takes the form of an immobilised global certificate lodged with a central securities depository such as Euroclear or Clearstream. No fully dematerialised system exists in the United Kingdom.

The law of the location on the securities depository holding the immobilised global certificate governs the nature of the investor's rights in ECP. ECP programmes commonly state that in the case of default of an issuer, it will provide definitive certificates to investors as noted in the books and records of the relevant depository. If it fails to issue these definitive certificates by an agreed date, a deed of covenant will apply showing property rights in favour of the investors in line with the account entries at the relevant depository.

The Public Offers of Securities Regulations 1995 (POS) implemented the EU Prospectus Directive and governs the offering of ECP to UK investors. As a practical matter, there are no listing or prospectus requirements for ECP because it falls within an exemption from the POS for instruments with a maturity of less than one year or in minimum denominations of EUR 40,000. As ECP constitutes an "investment" under the Financial Services and Markets Act (FSMA), London based ECP dealers must be authorised or exempt to carry out investment business in the UK. Purchases and sales of commercial paper are regarded as money market activity with secondary trading among market counterparties in the UK being subject to the FSA's Inter Professional Code. The issue and secondary trading of ECP in the UK is subject to the UK market abuse regime, which seeks to prevent insider trading and market manipulation. As a general matter, the UK CP market enjoys a lighter

regulatory regime because of its money market characteristics and because transactions occur between wholesale market counterparties.

The acceptance in the UK by an issuer of proceeds of ECP may technically constitute “deposit taking business” under FSMA requiring appropriate authorisation from the FSA. There is an exemption, however, for ECP issued to professional investors in minimum denominations of £100,000 or equivalent in another currency. Ratings of ECP are purely a matter of market convention and are not required by UK law or regulation. In terms of UK taxation of ECP, there is no withholding tax on interest for ECP with a maturity of less than 365 days. There is no VAT or stamp duty.

5.5 The US commercial paper market⁸⁶

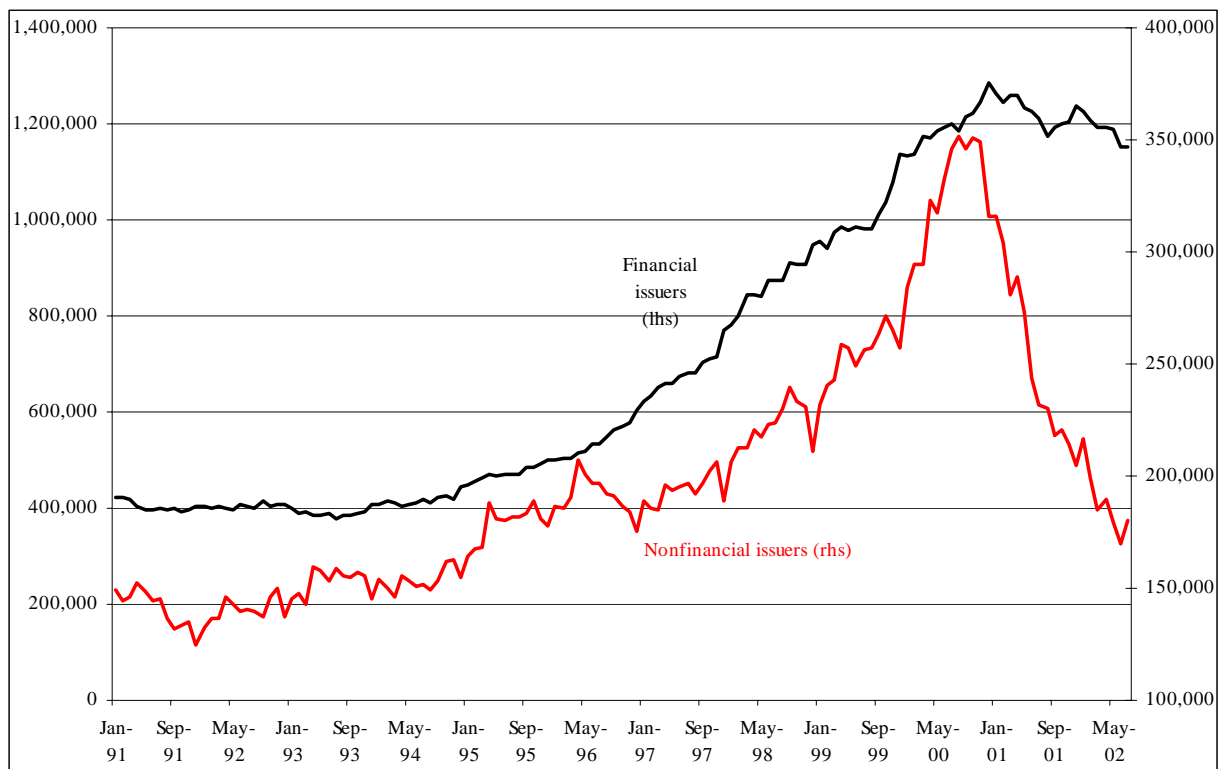
The modern US commercial paper (USCP) market originated in the 1960s and experienced a dramatic growth in the second half of the 1990s. Commercial paper consists of short-term, unsecured promissory notes issued mainly by corporations. Maturities range up to 270 days but average about 30 days. Many companies use commercial paper to raise cash needed for current transactions, and many find it a lower-cost alternative to bank loans.

Even though the USCP is still the most developed CP market in the world, it suffered a major contraction during the year 2001 and in the first months of 2002. In non-seasonally adjusted terms, the total outstanding amount decreased from the historical maximum of USD 1,602 billion in December 2000 to USD 1,331 billion in July 2002. Market size is thus back to the levels at the end of 1999.

This contraction was triggered by the collapse of issue by non-financial issuers. Between November 2000 and July 2002 the amount of commercial paper outstanding from non-financial corporations showed a 48% reduction, thus bringing the outstanding to USD 180 billion in July 2002, down from the historical peak of USD 352 billion registered in August 2000. Instead, in 2001-2002 issue by financial issuers (finance companies, bank holding companies, banks and broker-dealers) stabilised around USD 1,200 billion after the long growth phase that started in the mid-1990s.

⁸⁶ Data source: Federal Reserve and Goldman Sachs.

Not seasonally adjusted outstanding amounts (USD mln)⁸⁷



The trigger for the downturn of the USCP market can be identified in Armstrong World Industries' default on its commercial paper obligations in November 2000. After that default, the spread between A1/P1 rated paper and A2/P2 rated paper widened from 15-20 basis points (common value during the late 1990s) to as much as 100 basis points. In December 2000 Xerox announced that it had exhausted a USD 7 billion credit line established by a group of banks after the company was unable to roll over its commercial paper. The "panic phase", however, started only with the Enron collapse and reached a peak in February 2002 when both Tyco and Qwest Communications were forced out of the CP market.

The factors explaining the fast contraction in issue by non-financial corporations can be found in both the demand and the supply.

On the demand side the most important factor has been the impressive wave of credit rating downgrades observed in 2001 and 2002 (the downgrade/upgrade ratio for non-financial issuers of USCP is at its maximum levels). In fact, the US money market mutual funds, which are the biggest holders of commercial paper, must limit their exposure to tier two securities to 5% of the total assets.⁸⁸

⁸⁷ Source: Federal Reserve.

⁸⁸ The **Securities and Exchange Commission Rule 2a-7 of the Investment Company Act of 1940** requires that short-term securities purchased by money market funds must be rated within the two highest short-term rating categories (i.e. tier 1 or 2) by nationally recognised statistical rating organisations (NRSROs) or be deemed of comparable quality by the

Hence, the numerous downgrades of USCP issuers observed in 2001 and 2002 reduced substantially the possibility for many corporations of tapping the CP market⁸⁹.

On the supply side several factors are commonly referred to. The economic slowdown affected issue directly: less activity requires less funding. Companies that have not suffered a downgrade decided to reduce their reliance on commercial paper. In fact, the growing attention which rating agencies and investors started to pay to liquidity risk (and the actual reduction in liquidity observed on the market) triggered the need for companies to lengthen the maturity profile of their debt. Recent large long-term issues of corporate bonds can, to some extent, be explained by this phenomenon. The leading example is the record-breaking GECC's USD 11 billion global bond⁹⁰ issue launched on 15 March 2002. Another one is AOL Time Warner's issue of USD 6 billion of global bonds⁹¹ at the beginning of April 2002, which was aimed at paying down commercial paper and bank lines. Such a "pre-emptive" behaviour could become a (temporary) hindering factor for the growth of the markets for short term securities, both in Europe and the USA. The reduction in the number of M&As operations, which to some extent were financed with short term paper, also reduced the need to issue CP in the USA.

The consolidation in the US commercial banking industry might also have hindered issuance. The number of banks fell from 12,000 in 1990 to 8,315 in 2001; the top five banks in the US corporate loan market arrange 61% of large loans today compared to 26% in 1990; of the 15 largest banks ranked by asset size in 1990, only five remain. After the consolidation of the 1990's, J.P. Morgan Chase, Bank of America, First Union and Fleet Boston have taken the place of the previously existing 16 banks. Fewer banks imply less competition and higher issue fees.

USCP is issued in book-entry form and settlement is typically same day. The Depository Trust Company (DTC), a national clearinghouse for the settlement of securities trades and a custodian for securities, performs these functions for almost all activity in the USCP market. DTC supplies data to the Federal Reserve Board, which then publishes accurate information on its web site. Data on rates for CP are updated daily with a one-day lag. Data on CP outstanding are available as of the close of business each Wednesday and as of the last business day of the month; these data are also posted with

fund manager. Virtually all USCP programmes are rated by at least one of the three NRSROs. Issuers not rated in the highest short-term, category by an NRSRO or, if not rated, deemed to be tier-1 quality by a fund's board of directors, are considered to be tier 2 issuers. **Money funds that are not tax exempt are required by Rule 2a-7 to limit their exposure to tier 2 securities to 5% of the total assets.** Also, many CP investors have internal policies and guidelines about the eligible holdings, which are more stringent than those of Rule 2a-7. (See "Corporate Commercial Paper Liquidity Guidelines", Fitch Criteria Report, 24 April 2001.)

⁸⁹ In the past year many of the most important US CP issuers have been downgraded. Among many others, AT&T, British Telecommunications, Corning, DaimlerChrysler, Eastman Kodak, Edison International, The Gap, General Motors, Hertz, Motorola, Disney and Weyerhaeuser do not belong to the tier-one category anymore. WorldCom was downgraded to junk status on 9 May 2002.

⁹⁰ The issue included three tranches: a three-year, USD 4 billion FRN; a five-year, USD 2 billion fixed-rate bond; a 30-year, USD 5 billion bond. This is the biggest-ever solely dollar denominated corporate bond and the USD 5 billion tranche is the biggest ever 30-year corporate bond. On 31 May 2002 GECC launched a USD 6 billion two-tranche global bond (five and ten-year) whose higher-than-usual spreads started to reflect the company's growing reliance on the term debt market which is needed to pay off the outstanding commercial paper.

⁹¹ The issue included 4 tranches: a three-year USD 1 billion bond, a five-year USD 1 billion bond, a ten-year USD 2 billion bond and a thirty-year USD 2 billion bond.

a one-day lag. To calculate CP interest rate indexes, the Federal Reserve Board uses DTC's data for certain trades to estimate a relation between interest rates on the traded securities and their maturities. In this calculation, the trades represent sales of CP by dealers or direct issuers to investors (that is, the offer side) and are weighted according to the face value of the CP so that larger trades have a greater effect on the resulting index. With the relation between interest rates and maturities established, the reported interest rates represent the estimated interest rates for the specified maturities.

5.6 Legal aspects of the US commercial paper market

USCP are “securities” issued to qualify for an exemption from the requirement under the Securities Act of 1933, as amended ('33 Act), to register securities with the Securities and Exchange Commission (SEC). The most common exemption is Section 3(a)(3) for securities with a maximum maturity at the time of issue of up to nine months, the proceeds of which must be used only for current transactions. As USCP is issued under an exemption from registration in the '33 Act, no disclosures are required. However, it is market practice to provide a simple disclosure document to potential investors. While there is no required minimum denomination, market practice is for minimum denominations of \$100,000.

While USCP could be resold under a private placement exemption in the '33 Act, secondary trading in the CP market is limited because maturities tend to be short and potential investors seeking a particular maturity can purchase USCP in a new issue. Issuers or dealers are generally willing to repurchase the USCP under appropriate circumstances. USCP dealers need not register with the SEC as broker-dealers but most CP dealers are registered because they are engaged in other activities that require registration with the SEC.

Although USCP need not be rated, in practice it tends to be rated by one or more rating agencies to attract investor demand. Most USCP is rated in the highest USCP category (A-1/P-1). USCP is issued in book-entry form and settlement is typically same day.

5.7 Comparison of legal regimes for commercial paper

Many of the differences between Member States' legal regimes on short-term securities appear to have developed for historical reasons related to local market conditions (see, for instance, Italy, as described in Annex V). Despite different legal regimes at national level, however, national rules also show similarities. Moreover, legal systems representing different approaches to the degree and manner of regulation may each succeed in providing an adequate legal and regulatory environment for an active market. The French CP market and the ECP market governed by English law are two examples of legal regimes which, though different from one another, may offer some useful indications of legislative features that other Member States could consider.

It may also be noted in this context that the issuers of French CP are not necessarily French and that ECP also attract issuers from all over Europe and the USA. The major issuers of French CP and ECP, respectively, are set out in the tables in Annex VI. As the euro CP table shows, the issuers of ECP are a heterogeneous group of highly rated institutions. In fact, they belong to both the financial and the non-financial sector and are public as well as private institutions. Moreover, only a few of the issuers are established in the UK. The major issuers on the ECP market are the German Landesbanken, but Dutch, Austrian, Spanish and Irish issuers also appear among them in April 2002. The issuance of the top 49 issuers listed in Annex VI represents 50% of the total ECP market, while that of the top 15 issuers represents 20%. In the case of the French domestic market the latter figure is as high as 60%, indicating that the French market is much more concentrated than the ECP one.

Annex VII considers and compares some aspects of the regimes for the French CP market and the ECP market governed by English law. In these two legal regimes the set-up for regulation differs, with an active role for Banque de France in the former and a light regulatory approach based more on self-regulation for the latter. However, the main characteristics of the instruments themselves, French CP and ECP, and how they are traded, are otherwise similar.

As mentioned in Chapter 3.3.2 above, the debate concerning regulated versus unregulated markets has been intense, particularly in relation to the domestic French CP market and the ECP market. In France today (before the implementation of the amended UCITS Directive), the French CP market is considered “regulated enough” to allow money market funds to acquire an unlimited amount of such commercial paper, while ECP may only be accepted under the 10 % rule.

The similarities of the main characteristics of French CP and ECP are easy to understand. Again, we refer to developments in the USA since the mid-eighties when the US CP market was a model that was imitated in Europe. As in the USA, the goal was disintermediation through simple and efficient instruments that enabled corporate issuers to tap the money market easily. As a result, three main features characterise these two European CP markets: CP are (i) wholesale instruments (ii) short-term instruments, and (iii) flexible instruments.

(i) CP are wholesale instruments

They are issued in large minimum denominations. Accordingly, only professional investors can buy them and such investors do not need to be protected in the same manner as retail investors. Contrary to retail investors, wholesale investors can indeed make independent investment decisions and bear risk of loss. There is also limited secondary trading in CP as explained below.

(ii) CP are short term instruments

Because of the short maturity date, investors only take a short-term credit risk. Accordingly, only a minimum disclosure and a credit protection provisions are included in the “light” documentation made

available to investors. As CP are short-term instruments, most investors hold CP to maturity. Therefore, there is limited secondary trading.

(iii) CP are flexible instruments

The flexibility of CP is justified by their wholesale and short-term features. CP can be lightly documented and regulated because only professional investors subscribe to them and bear a short-term credit risk. Flexibility is certainly the major reason for the success of CP. In France for example, corporate issuers do not need to have an authorisation of the shareholders to issue CP. A director (or any other duly authorised person) does not even need a decision of the Board of Directors. That explains why in many cases, French issuers have preferred to issue CP rather than bonds. Flexibility enables issuers to tap the market very swiftly to take advantage of favourable market conditions. Flexibility also permits issuers to reduce substantially their cost of funding.

6. Market documentation

Consideration may also be given to the use of standardised market documentation under different governing laws in view of existing prospectuses. To this end, a survey of the existing market documentation has been conducted by reviewing over 20 prospectuses from various randomly selected issuers. The approach was to focus on commercial paper programmes and review the market documentation to consider differences and similarities between sets of documents governed by the laws of different legal systems. Annex VIII sets out the various sets of market documentation we have reviewed as a basis for our analysis.

6.1 Preliminary remarks

For the issue of commercial paper, we distinguish between domestic CP and ECP. In terms of legal definitions, however, the exact meaning of this division may be less clear and there appears to be no common understanding of the term "euro commercial paper programme". On the basis of our survey, most of the programmes that carry this term would seem to be governed by English law but many also use German law. According to the Guidelines of the British Bankers Association (BBA) on commercial paper,⁹² uncommitted ECP programmes were originally based on the US dollar. The main feature of an ECP was the lack of compliance with SEC exemptions in the USA and it could therefore not be sold to US investors. It appears that this distinction between ECP and CP programmes is made from the issuers' and investors' perspective (in cases where local companies tend to pre-dominate and name recognition carries more weight than credit ratings).

⁹² BBA Commercial Paper London Market Guideline, April 2000, Section 2.4.

Depending on the lead arranger, the form follows a constant pattern. The BBA Guidelines on commercial paper confirm this finding. The usual contents of the basic documents are largely standardised. Programme documents governed by English law must include a Deed of Covenant that sets out the rights of investors holding an interest in a global note.⁹³

6.2 Governing law

There appears to be no mandatory legislation that would force issuers to use the law of their home jurisdiction. The law most often selected is English law. German issuers tend to use German law whichever kind of programme they wish to establish. A few multi-issuer programmes differentiate the applicable law according to which issuer is concerned. In addition, guarantees are normally governed by the law where the guarantor is domiciled.

6.3 Domestic markets

Market participants have reported that in several EU Member States no programmes are issued under the respective national law. This might be due to the small size of the domestic markets. To tap a wider investment base, programmes are apparently drafted in English and governed by English law. Obviously, the costs of translation and conflicts with the ruling version can be avoided by focussing on one single language and law. One source explained the lack of CP programmes under Spanish law by the legal requirement to establish and effect a public deed. In addition Spanish law governed securities tends to be controlled by the Spanish Supervisory Authority (CNMV). Spanish banks use promissory notes to finance themselves under the supervision of the CNMV.

6.4 Provisions to be compared

The content of the contractual documents governing the issue of CP is a matter between the issuer and the other parties to the agreements. Given the basic framework for these programmes, however, the parties usually agree on a standard subset of documents. For the note itself, it might be advisable to compare the following basic terms:

- Currency, denomination, maturity, and respective definitions;
- Interest calculation; floating/fixed/index;
- Termination events/events of default (if any);
- Tax;
- Instructions for payment/repayment/early redemption;

⁹³ BBA Section 4.6.

- Form of the note/ global note;
- Settlement, issuing and clearing procedures;
- Governing law, place of performance and jurisdiction.

The programmes we reviewed, including some with multi-governing law clauses, indicated no substantial differences in the documentation of the different notes.

6.5 Outlook and further actions

Our review shows that the market documentation could possibly be standardised so that a single set of main provisions could function, with some specific adjustments, under each of the various legal regimes of EU Member States. However, such a venture would require some further research in order to conduct a more in-depth analysis of the provisions stated above and to cover all EU countries since, as yet, we have not reviewed certain countries' market documentation.⁹⁴

7. Conclusions

This Report provides information on legal aspects of short-term securities as a first step in supporting the creation and development of a deep, liquid, efficient and integrated pan-European market. Our review of legal regimes has also covered certificates of deposits and medium-term notes, but we have focused on commercial paper. We have considered in particular the current two main categories of commercial paper markets in Europe: the domestic CP markets (particularly the French CP market) and the euro commercial paper market, which we have presented as case studies for comparative purposes.⁹⁵ Integration among these markets is currently low and a truly pan-European commercial paper market does not exist.

The existing national legislation or regulations governing short-term money market paper were generally adopted with a view to govern each such national money market. The introduction of the euro, the TARGET payment system, and the euro-wide interest reference rates EURIBOR and EONIA, have however changed the premises for such national approaches. Instead, common and uniform legislation and regulation is required if the objective is to achieve an integrated money market, at least in the segment of euro-denominated short-term securities. For instance, there could be a uniform regulatory framework defining the minimum and maximum duration of the short-term money market paper; the minimum amount of each paper; and the authorised issuers of each kind of

⁹⁴ See Annex VIII.

⁹⁵ See Chapter 5.

short-term money market paper. With regard to the substance of such a uniform framework, the EFMLG refers to the terms suggested by the Euribor ACI in its Preliminary Report.

Recommendation No. 1: The EFMLG recommends that EU Member States adapt their legislation to the extent relevant in view of the common standards recommended by the Euribor ACI in its Preliminary Report. In addition, the EU Financial Services Policy Group may consider the common regime suggested by the Euribor ACI Preliminary Report as a basis for a Community legal act in the context of the Action Plan for Financial Services.

Several EU directives refer and apply to money market instruments,⁹⁶ such as the ISD and the UCITS Directive, but no EU legislation provides detailed substantive rules applicable specifically to commercial paper or, for that matter, to short-term securities. The absence of a specific substantive EU regime means that the matter is left to national legislators and authorities to address at the national level. Existing structural differences in the money markets of the Member States and the lack of substantive Community legislation in this field have allowed national authorities substantial leeway in defining and deciding the degree of regulation of these instruments. Many of the differences between Member States' legal regimes on short-term securities appear to have developed over time for purely historical reasons related to the local market conditions. There are therefore different domestic legal regimes in the various EU Member States.⁹⁷

Already the conceptual definition of the type of instruments referred to would appear somewhat inconsistent. The borderline between money market instruments and transferable securities is not clearly established in Community legislation. According to the recent Commission orientations for the amendment of the ISD, securities normally dealt in on the money market (CDs, euro-commercial paper) would be defined as a sub-division of transferable securities, which in turn are covered under the general regime for financial instruments. The UCITS Directive, as amended, maintains a basic distinction between transferable securities and money market instruments, namely in the context of the definition and regulation of money market funds. This distinction also appears implicitly in the recent Commission amended proposal on the Prospectus Directive. However, Community legislation offers no more indication of the characteristics and particular regime of each category of money market instruments (CDs, CP, treasury and local authority bills, medium term notes, bankers' acceptances, etc). Moreover, it does not specifically distinguish between "domestic-market" and "non-domestic market" for short-term securities. (i.e. the former - and now misleading - denomination of "euro markets").

⁹⁶ See Chapter 3.

⁹⁷ See Chapter 4 and Annexes I - III.

Despite these terminological inconsistencies, and with a reference to the ECB's definition of money market instruments for the Eurosystem's regime of monetary statistics, it appears that money market instruments can be characterised under EU legislation as follows:

- they are normally dealt in on the money market;
- they are normally not traded on regulated markets;
- they are liquid;
- they have a value which can be accurately determined at any time;
- they have market depth, certainty in value, low interest risk, and low credit risk.

None of the domestic CP markets in EU Member States, nor the ECP market, is today formally qualified as a "regulated market" within the meaning of the ISD. Each of the legal regimes of the domestic CP markets provides a certain degree of regulation, but it is not certain whether such markets could come within the criteria now established in the revised ISD.

Recommendation No. 2: The EFMLG recommends that the legal qualification of the CP market(s) as either "regulated" or "non-regulated" markets should be clarified in legislation and be uniform across EU Member States.

In view of today's situation where the legal regimes for short-term securities are largely national in nature, Member States may wish to consider the situation across the EU when amending their own laws on the topic. Implementation of the UCITS Directive will be a good opportunity to improve the conformity of the legislative regimes of Member States. The conditions under which UCITS may invest in money market instruments, including CP, are set out in Article 19 of the amended UCITS Directive. Implementation of this Article of the amended UCITS Directive will be crucial.⁹⁸ In particular, Article 19 (2) (a) contains the so-called 10% rule which limits the possibility for UCITS to invest in certain categories of money market instruments, including the criteria that will need to be fulfilled for the 10% limitation not to apply.⁹⁹ Implementation of Article 19 of the amended UCITS Directive in Member States should ensure that any inconsistencies are avoided in the treatment among EU Member States of CP, ECP and other money market instruments, to the extent they are equivalent. This occasion might also present an opportunity to reach a better and more detailed understanding of the common features that these instruments would need to enable UCITS to invest in them without

⁹⁸ The manner in which Articles 19 (1) (a), (b), (c), Article 19 (1) (h) and Article 19 (2) (a) of the amended UCITS Directive will be transposed into national legislation will be particularly important.

⁹⁹ See Chapter 3.3.2.

restrictions. In the end, the same instruments, and different instruments with the same characteristics, should receive equal treatment in the various Member States.

Recommendation No. 3: The EFMLG recommends that the amended UCITS Directive is implemented by Member States in a uniform manner regarding money market instruments, with the aim of exempting such instruments from the 10 % ceiling established in Article 19(2)(a) of the UCITS Directive.

The extent to which the proposed Prospectus Directive might cover money market instruments should also be considered further. Whether or not short-term debt instruments, including commercial paper, should be subject to the proposed Prospectus Directive is linked to the level of market disclosure appropriate for the proper and safe functioning of this type of market. Some national laws already contain an exemption to the prospectus requirements and impose lighter information requirements for the issue of money market instruments. Such exemptions are appropriate for CP considering the characteristics of CP as wholesale, short-term instruments, traded on flexible terms.¹⁰⁰ This is not always clear and should be made clear, at least for instruments with shorter maturity than one year. Again, equal treatment in the different Member States of equivalent money market instruments would help avoid obstacles to the development of an efficient integrated market.

In this connection, our case studies concerning the French CP market and the euro CP market¹⁰¹ show two examples of legal regimes that provide frameworks which, from a market perspective, appear to offer appropriate, though different, arrangements to create successful market conditions. The examples in this Report show that Member States may indeed learn from each other's legislative practice and may also achieve a higher degree of harmonisation across borders. As a minimum, each national legal regime for commercial paper should be open for issuers and investors from all other Member States on a non-discriminatory basis. It is noted that neither the French domestic CP issues nor the English law-governed ECP are subject to prospectus obligations.

Recommendation No. 4: The EFMLG recommends that the still draft Prospectus Directive and national legislation exempt the issuers of money market paper of less than one year maturity from the obligation to adopt, register and update a prospectus.

¹⁰⁰ See Chapter 5.7 and the comparison between French CP and ECP.

¹⁰¹ See Chapter 5.

The EFMLG notes that some Member States assimilate short-term money market instruments with securities, and subject such paper to the supervision of the securities market supervisor and regulator. However, the EFMLG also notes that in some other countries such supervision or regulation, or other kind of monitoring, is entrusted to the central bank.¹⁰² In some other Member States, there is no such specific regulation and the market is instead monitored by authorities entrusted with general financial markets supervision or regulation.¹⁰³ To achieve a level playing field in this respect, the EFMLG notes that central banks are well placed to be the authority organising and monitoring the market for short-term money market paper for a number of reasons. The market is, for instance, a wholesale professional market closely related to the management of the overall liquidity of the credit sector, it is closely related to the payment and settlement infrastructures, issuers are mostly counterparts of central banks (i.e. credit institutions), and uses central bank money. Furthermore, the Eurosystem is the central bank of the euro, functioning in a decentralised manner but under unified decision-making, which provides a unique institutional opportunity for a common overseer of a euro-denominated money market paper operating across the EU. To have a common organiser and overseer of this particular segment of the euro money market would be a natural consequence of monetary unification and in the interest of market participants.

Recommendation No. 5: The EFMLG recommends national and Community authorities, and the ECB, to consider the establishment of a common overseer, or at least a similar kind of overseer, across EU Member States, taking account of the above considerations.

Despite the different national legal regimes, our review of market documentation for commercial paper programmes under different governing legal systems indicates that there are no significant substantial differences to such documentation.¹⁰⁴ Accordingly, it might be possible to standardise the market documentation used for commercial paper. Such a project could take place under the auspices of the Euribor ACI, with the involvement of national and other relevant market associations, and with the assistance of a law firm covering the jurisdictions concerned.

Recommendation No. 6: The EFMLG considers appropriate that the possibility to standardise market documentation is pursued and that market associations may entrust a law firm covering the relevant financial markets with the task of further analysing market documentation and proposing such uniform market standards.

¹⁰² The most important such CP market is located in France, regulated and supervised by the Banque de France; other cases are Italy, Portugal, Ireland. In Finland the central bank is closely associated to the supervisory authority in this particular market.

¹⁰³ Germany, United Kingdom and Belgium.

¹⁰⁴ See Chapter 6.

Finally, the EFMLG notes that national legislation imposes different regimes of withholding tax for interest payment on short-term money market paper, in some cases exempting payments from such withholdings. The EFMLG considers such differences, together with the differences in the administrative burdens if such withholding taxes have to take into account double taxation treaties, as potentially leading to distortions in what should be a lean and integrated money market (i.e. meeting the so-called “law of one price”). Withholding taxes have only a temporary short-term financial effect, since corporate taxation absorbs these withholdings on a yearly basis and, therefore, the abolition of potential distortions may be without financial consequences for national budgets.

Recommendation No. 7: The EFMLG recommends to the Ministers of Finance of the EU that they agree to a common withholding tax regime for short-term money market paper in order to contribute to the integration of the money markets following monetary unification.

ANNEX I
to the EFMLG report on legal aspects of short-term securities

CERTIFICATES OF DEPOSIT

2 September 2002

ANNEX I

Certificates of Deposit

| 1 | Legal basis |
|---------|--|
| BELGIUM | The Law of 22 July 1991 on Treasury bills and certificates of deposit (Loi relative aux billets de trésorerie et aux certificats de dépôt). |
| DENMARK | |
| GERMANY | The general rules within supervisory law and the Civil Code (Bürgerliches Gesetzbuch) apply, in particular sections 793 seq. of the Civil Code. Specific definitions are given in section 1(11)Nr.2(3) of the Banking Act (Kreditwesengesetz) of 1998, section 2 (1a) of the Securities Trading Act (Wertpapierhandelsgesetz), section 7a(2) of the UCITS- Act (Kapitalanlagegesellschaftsgesetz) ('money market instruments'). |
| GREECE | |
| SPAIN | Law 24/1988 of 28 July on the Securities Market (<i>Ley del Mercado de Valores</i> , "the Law"), and implementing legislation, including Article 2.c) of the Royal Decree 291/1992 of 27 March on Issue and Public Offerings of Securities (<i>Real Decreto sobre Emisiones y Ofertas Publicas de Venta de Valores</i> , "the Decree"), according to which, "marketable securities" means "bills of exchange, promissory notes, certificates of deposit and any other analogous instruments unless they are issued individually and, in addition, they are derived from previous commercial operations, which do not imply the receiving of repayable funds from the public". In spite of this specific provision, certificates of deposit are currently seldom used in Spain. |
| FRANCE | Article L. 213-1 of the French Financial and Monetary Code defines negotiable debt securities ("Titres de Créances Négociables" – (TCN)-) as " <i>titres émis au gré de l'émetteur, négociables sur un marché réglementé ou de gré à gré, qui représentent chacun un droit de créance pour une durée déterminée</i> ". They are negotiable debt securities, each representing a fixed-term debt, issued at the initiative of the issuer and traded on a regulated market or over the counter. This definition covers in particular "certificats de dépôt" (certificates of deposit), "billets de trésorerie" (commercial paper) and "bons à moyen terme négociables -BMTN" (Medium-Term Notes). Conditions of issue are defined by Articles L. 213-2 to L. 213-4 of the Code and by Decrees and CRBF Regulations. (Regarding TCN: see Decree n°92-137 of 13 February 1992 as amended by Decree n°98-1316 of 31 December 1998, CRBF Regulation n°98-08 of 7 December 1998 and Ministerial Order of 31 December 1998). Decree n°98-1316 defines general principles applicable to all kinds of TCN. The CRBF Regulation n°98-08 defines the rules applicable to the issuance by credit institutions and investment firms, respectively of certificates of deposit and of CP as well as the issuance of MTN by these two categories of issuers. Ministerial Order of 31 December 1998 defines the rules applicable to debt securities issued by non-financial entities (CP and MTN of industrial and commercial undertakings). |

| 1 | Legal basis |
|-----------------|--|
| IRELAND | Insofar as a certificate of deposit is evidence of a deposit, it falls within the legislative definition of “banking business” under the Central Bank Act 1971. The issuance of a certificate is the equivalent of taking a deposit, an activity that only licensed credit institutions may undertake, subject to certain exceptions and exclusions. |
| ITALY | Articles 2 and 5, Decree of the Treasury 22 June 1993, n. 242631 on the issue of bonds, certificates of deposits and other forms of fund-raising. “Istruzioni di vigilanza per le banche” issued by Banca d'Italia, Circular n. 229 of 21 April 1999, Title V, Chapter 3. |
| LUXEMBOURG | None as such (of course, various legal provisions affect CDs). |
| THE NETHERLANDS | The Act on the Supervision of Credit Institutions 1992 (<i>Wet toezicht kredietwezen</i>) and implementing rules and regulations, the Act on the Supervision of Securities Trade (<i>Wet toezicht effectenverkeer</i>) and implementing rules and regulations. |
| AUSTRIA | The general legal basis is the commercial certificate of obligation according to section 363 Commercial Code and the principle of freedom of contract. |
| PORTUGAL | Decree-Law No. 372/91 of 8 October 1991, amended by Decree-Law No. 387/93 of 20 November 1993. |
| FINLAND | Section 11 of the Law on Promissory Notes (622/1947) and Chapter 1, Section 2(2) of the Securities Markets Act (495/1989). |
| SWEDEN | |
| UNITED KINGDOM | |
| USA | Since CDs are bank deposits, they are governed by general bank regulations governing deposits. CDs are insured by the FDIC up to \$100,000 under the Federal Deposit Insurance Act. |

| 2 | Legal definitions |
|---------|--|
| BELGIUM | <p>Article 4 of the Law of 22 July 1991 lays down an indirect definition of what constitutes a certificate of deposit: it states that the denomination “certificate of deposit” shall only be applied to instruments made in Belgium if they conform with this law.</p> <p>Article 1(3) of the Law of 6 April 1995 (Loi relative aux marchés secondaires, au statut des entreprises d’investissement et à leur contrôle, aux intermédiaires et conseillers en placements) defines money market instruments (instruments du marché monétaire) as consisting of such categories of financial instruments that are customarily used in the money market (instruments financiers habituellement négociés sur le marché monétaire); it also states that this law does not apply to money market instruments as so defined.</p> <p>TBT are defined as debt instruments created for a limited time by Article 1 §1 of the Law on Commercial Paper and Certificates of Deposit of 22 July 1991, and when issued by credit institutions are called “<i>Depositobewijzen/Certificats de dépôt</i>” (CD or Certificates of Deposit).</p> |
| DENMARK | |
| GERMANY | <p>Section 1(11)Nr.2(3) of the Banking Act (Kreditwesengesetz) of 1998, and section 2 (1a) of the Securities Trading Act (Wertpapierhandelsgesetz) contain a general definition of “money market instruments” as (non-securitised) fungible debt, usually traded on the money markets. The UCITS act refers to a maturity up to 12 months. CDs, CPs and T-Bills are normally issued as securitised debt (sections 793 seq. Civil Code).</p> |
| GREECE | |
| SPAIN | <p>Certificates of Deposit are called “Certificados de Depósito”.</p> <p>There is no legal definition. See 1 before.</p> |
| FRANCE | <p>Article L 213-1 of the French Financial and Monetary Code defines “Titres de Créances Négociables” (TCN) (see 1). No specific definition of certificates of deposit (see however 3).</p> |
| IRELAND | <p>At common law a certificate of deposit has been defined as evidence of a prior agreement between a depositor and a depositee that the depositee will pay to the holder of the certificate on the terms stated in the certificate. See Roy Goode, Commercial Law, 2nd ed., 1995, p. 629. Section 814 of the Taxes Consolidation Act 1997 defines a certificate of deposit as a document relating to money in any currency which has been deposited with the issuer or some other person, and which recognises an obligation to pay a stated amount to the bearer or to order with or without interest; delivery of this document with or without endorsement can transfer the right to receive that stated amount with or without interest.</p> |
| ITALY | <p>A definition is contained in the “Istruzioni di vigilanza” issued by Banca d'Italia: “titoli di credito emessi per la raccolta di risparmio a breve e medio termine”.</p> |

| 2 | Legal definitions | |
|-----------------|---|--|
| LUXEMBOURG | None. The ABBL (Luxembourg Banker’s association) states: “Certificates of deposit (CDs) are negotiable bearer unsecured promissory notes with short to medium-term maturity issued by banks as receipt for deposits placed with them for a fixed period. These securities are mainly bought by institutional and professional investors. Usually issued at a discount by using a group of dealers, certificates of deposit are traded on the international secondary market.” | |
| THE NETHERLANDS | Defined in the Credit System Supervision Manual (implementing the Act on the Supervision of the Credit System 1992, the <i>Wet toezicht kredietwezen</i>): short-term negotiable bearer debt instruments issued by banks. | |
| AUSTRIA | Under Austrian law a Certificate of Deposit is a security. There are no special legal definitions. | |
| PORTUGAL | Although a proper legal definition is not laid down in Decree-Law No. 372/91, Article 1 gives a broad description of such a money market instrument: “The credit institutions legally authorised to receive deposits can issue certificates of deposit, according to the present legal act, representing the deposits in escudos or foreign currency held by them”. Moreover, under Article 2(1), certificates of deposit are non-dematerialised securities. | |
| FINLAND | Section 11 of the Law on Promissory Notes (mentioned above) does not define “certificate of deposit” but lays down a general definition of promissory notes. A more detailed definition of certificates of deposit is laid down in Chapter 1, Section 2(2) of the Securities Markets Act. | |
| SWEDEN | | |
| UNITED KINGDOM | | |
| USA | There are no legal/statutory definitions, although the Federal Reserve regulations may have a definition of CD. | |

| 3 | Issue |
|----------------|---|
| BELGIUM | Under Article 1 of the Law of 22 July 1991, certificates of deposit may only be issued by credit institutions established in Belgium or credit institutions established in another EU Member State who have the right, under their respective national laws, to issue certificates of deposit. The minimum amount is set at EUR 250,000. |
| DENMARK | |
| GERMANY | CDs are issued by the banking sector, usually with a maturity of up to 1 year. Nowadays banks usually issue CP under an “ECP-Programm” according to German law. |
| GREECE | |
| SPAIN | There is no legal provision limiting the issuance of certificates of deposit to credit institutions. However, as only credit institutions can hold deposits from the public under Law 26/1988 of 29 July, marketable securities under the name of certificates of deposit could only be issued by the same institutions. The Law and the Decree apply to securities issued in Spanish territory, i.e. addressed to investors resident in Spain. (Decree, Article. 3). |
| FRANCE | Article L. 213-3 of the French Monetary and Financial Code lists the legal entities authorised to issue TCN, i.e. credit institutions, investment firms, Caisse des Dépôts et Consignations, companies making public offerings, economic interest groupings, Community institutions and international organisations of which France is a member. Since the law “NRE” of 15 May 2001, local public authorities are also authorised to issue CP and MTN. Certificates of deposit are only issued by credit institutions (resident or non-resident) and Caisse des Dépôts et Consignations (see Decree of 1992 as above). Dematerialisation has been compulsory since 1993. According to CRBF Regulation 98-08 of 7 December 1998, certificates of deposit must have a fixed maturity date, an initial maturity of at least one day and a unit value equivalent to at least EUR 150,000.00. Their maximum maturity must not exceed one year. |
| IRELAND | Since certificates of deposit are evidence of a deposit, only persons authorised to accept deposits under Irish law may issue certificates of deposit. Under Section 2(1) of the Central Bank Act 1971, “banking business” is defined as the business of accepting, on the bank’s own account, sums of money from the public in the form of deposits or other repayable funds, whether or not involving the issue of securities or other obligations, howsoever described. Under Section 7(1) of the Central Bank Act, 1971, a person must not, in or outside the State, carry on banking business or on behalf of any other person accept deposits or other repayable funds from the public unless he holds a licence, subject to certain exceptions and exclusions. In practice, it follows from these provisions that only persons licensed and supervised as banks (i.e. as credit institutions) may issue certificates of deposit. |
| ITALY | Certificates of deposit are issued exclusively by banks in Italy. |

| 3 | Issue |
|-----------------|---|
| LUXEMBOURG | There is no specific procedure dealing with the issuance. It is generally and in practice considered that certificates of deposit can be issued by banks on an individual and private basis while commercial paper (billets de trésorerie) and MTNs (bons à moyen terme négociables) will generally be issued in series and placed privately or publicly. |
| THE NETHERLANDS | Certificates of deposit are issued by credit institutions. The minimum amount is set at EUR 454,000.000. Issuance is generally regulated by the Act on the Supervision of Securities Trade 1995 (<i>Wte 1995</i>). |
| AUSTRIA | Certificates of deposit are issued exclusively by banks in Austria. Certificates of deposit have been issued as registered securities but could also contain an order clause or could be issued as bearer securities. |
| PORTUGAL | Under Article 1 of Decree-Law No. 372/91, certificates of deposit are issued exclusively by credit institutions. |
| FINLAND | There are no specific rules or limitations on the issuance of certificates of deposit under Finnish law. However, in practice certificates of deposit are issued only by banks. |
| SWEDEN | |
| UNITED KINGDOM | |

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|-----|--|
| USA | As a bank deposit, CDs are issued only by banks and thrifts. Federal Reserve regulations require CDs to have a minimum maturity of seven days, but there is no maximum. There is also no minimum amount for issuance, but the practical minimum will depend on whether the CD is a retail CD sold directly to a customer or through a broker or an institutional CD. CDs sold direct to individuals will generally be in small denominations, and certainly under \$100,000 (to get the benefits of deposit insurance). CDs sold through brokers will be issued generally in amounts of \$1 million or more, with the broker breaking it into smaller amounts for sale to retail customers in increments of \$100,000 or less (again to get the benefit of deposit insurance). Institutions will purchase CDs in larger amounts. |
|-----|--|

| 4 | Rating | |
|-----------------|---|--|
| BELGIUM | Rating is not compulsory. | |
| DENMARK | | |
| GERMANY | Depends on the issuing institution; a rating of short-term issues is unusual. | |
| GREECE | | |
| SPAIN | Rating is not used for certificates of deposit. | |
| FRANCE | Rating is not compulsory. It is obtained from a rating agency listed by the French Ministry of Economy and Finance. There is a simplified information procedure for rated issuers. | |
| IRELAND | There is no information to date regarding statutory or other provisions on required ratings for certificates of deposit. | |
| ITALY | Rating is not used for certificates of deposit. | |
| LUXEMBOURG | Rating is not compulsory. | |
| THE NETHERLANDS | Rating is not compulsory. | |
| AUSTRIA | No provisions on rating. | |
| PORTUGAL | No rating. | |
| FINLAND | Under Chapter 3, Section 11 of the Securities Markets Act, the Stock Exchange may list an instrument such as a certificate of deposit that has been issued to the public, if the issuer is a member of the Stock Exchange and applies for such listing. | |

| 4 | Rating |
|----------------|--|
| SWEDEN | |
| UNITED KINGDOM | |
| USA | The “rating” for CDs will be the bank’s general credit rating, but this does not generally play into the market. |

| 5 | Investors and prospectuses | |
|---------|--|--|
| BELGIUM | Article 5 of the Law of 22 July 1991 and part 2 of the Royal Decree on Commercial Paper and Certificates of Deposit of 14 October 1991 lays down the requirement for prospectuses to be released in connection with issuance of certificates of deposit. The contents of the prospectus are described in Articles 5(1)-5(3). The prospectus must be lodged with the Banking Commission (CBF) and agreed by the same authority. | |
| DENMARK | | |
| GERMANY | A prospectus is required under section 7 of the Prospectus Act (Verkaufsprospektgesetz) of 1998. In practice, exemptions apply in case of restricted subscribers, minimum tradable lots beyond 80,000 DM or maturities of less than one year. Prospectuses have to be deposited with the Federal Financial Supervisory Agency (BAFin). | |
| GREECE | | |
| SPAIN | <p>Under the Law, Article 26(d)), before the issue of marketable securities, a prospectus must be presented to and registered (with some exceptions) with the CNMV (<i>Comisión Nacional del Mercado de Valores</i>: Spanish securities supervision agency). The prospectus must contain enough information for the investor to make a judgment on the proposed investment. It must state the conclusion of the mandatory audits in line with Article 27 of the Law, the obligations derived from the securities, and the procedure for placing the security on the market. The prospectus must follow the models approved by the CNMV (see CNMV Circular 2/1999) and fulfil a series of minimum formal requirements. Correction of mistakes or relevant ex-post information must be included in a supplement. (Decree, Article 15-23).</p> <p>The public offer must take place within a month of the registry of the prospectus with the CNMV (Decree, Article 25).</p> <p>In the case of international offers (i.e., including non-Spanish residents) the prospectus must include all information provided to foreign investors, even if not required by Spanish legislation. All information must be translated into Spanish (Decree, Article 26).</p> <p>In the case of issuers not resident in Spain, the required audit must comply with the legislation of the place of residence of the issuer. If this is outside the EU, the CNMV may require additional clarification regarding the applicable norms.</p> | |
| FRANCE | No prospectus requirements. However, under Article L. 213-4 of the French Financial and Monetary Code, the issuers of TCN must fulfil certain information obligations concerning their economic and financial situation and their issuing programme. A Decree specifies the content of these obligations and the conditions of publicity. The COB is responsible for ensuring the fulfilment of these obligations (especially when issuers do not provide any rating). The information document that issuers must submit to Banque de France is called “Dossier de présentation financière” (Information Memorandum). | |
| IRELAND | Insofar as a certificate of deposit is a negotiable instrument, it may be regarded as a debt security subject to the general regulations on the issuance of securities under Irish law. However, in practice, it is unlikely to be subject to any securities law requirement, since (a) certificates of deposit are never admitted to official listing on a stock exchange and (b) only transferable debt securities with a maturity of at least one year are subject to public offer prospectus requirements under the Irish Regulations implementing the Prospectus Directive. However, this matter requires confirmation. | |

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|------------------------|--|--|
| 5 | Investors and prospectuses | |
| ITALY | There is no obligation to issue a prospectus. The “Istruzioni di Vigilanza” of Banca d'Italia requires a certificate of disclosure as to the characteristics of the issue, each time in form of a “Foglio Informativo Analitico” related to the issued Certificato di Deposito. In addition, the Istruzioni lays down the main features that are mandatory for the certificates. It is forbidden to issue certificates with features different from those laid down by the Istruzioni. | |
| LUXEMBOURG | A prospectus is only required if the instruments are either offered to the public in Luxembourg or listed on the Luxembourg Stock Exchange. If the instruments are issued under a public programme, then the prospectus must be updated annually. An update is also required if major events occur that could affect the issuer’s creditworthiness. | |
| THE NETHERLANDS | The Act on the Supervision of Securities Trade 1995 (and further rules and regulations) stipulates the requirements to the prospectus, which must be published unless securities are offered only to professionals, to a select group or only outside the Netherlands. | |
| AUSTRIA | Article 2 of the Austrian Capital Market Act states that a prospectus is needed when securities are offered to the public. No prospectus has to be drawn up when securities are only offered to limited number of professional investors. | |
| PORTUGAL | Article 7 of Decree-Law No. 372/91 entrusts the Banco de Portugal with the power to impose on the credit institutions specific duties of information either before or after sending out certificates of deposit. | |
| FINLAND | Chapter 2, Section 2 of the Securities Markets Act states that anyone who issues securities (e.g. certificates of deposit) to the public must provide sufficient information on any circumstances that may substantially affect the value of the securities in question. This requirement is somewhat less extensive than the duty to issue a formal prospectus laid down in Chapter 2, Sections 3 and 4 of the Securities Markets Act. | |
| SWEDEN | | |
| UNITED KINGDOM | | |

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|------------|--|
| USA | Investor protection is governed by the 33 Act. However, for a bank to sell CDs directly, there are no required disclosures since securities issued by a bank are exempt from the 33 Act prospectus requirements. When a broker sells the CDs, NASD rules will require a simple disclosure document to be given to investors describing the general nature of the CDs and their risks, including restrictions on transfer and penalties for early withdrawal. Again, the investors in CDs are usually retail customers, although institutions can and do negotiate better rates for large denomination CDs. |
|------------|--|

| 6 | Trading | |
|-----------------|--|--|
| BELGIUM | The issuer may restrict trading of CD. Buy-back by the issuer is possible but unusual. | |
| DENMARK | | |
| GERMANY | OTC. Due to the short-term nature, an exchange admission is seldom sought for small trading activities (“buy and hold” paper). | |
| GREECE | | |
| SPAIN | The admission of securities to trading in official markets requires prior verification by the CNMV (Law, Article 32.1) and the agreement of the authority of the secondary market concerned. In Spain, there is an official secondary market for fixed return securities. However, this market does not include CDs among its negotiated instruments. | |
| FRANCE | TCN can be traded on a regulated market or an over the counter market (Article L. 213-1 of the Financial and Monetary Code). Trading and placing of TCN may be carried out in France or abroad by any credit institution (including the Caisse des Dépôts et Consignations) or investment firm, provided they are licensed to carry out placement activities in the relevant jurisdiction. Buy-back is possible for issuers; there are reporting obligations to Banque de France. | |
| IRELAND | The courts would recognise that trading in certificates of deposit proved their negotiability. If the market recognised certificates of deposit as negotiable, a court would be unlikely to take a different view, particularly if it heard proper expert evidence on market practice and understanding. See Roy Goode, <i>Commercial Law</i> , 2 nd ed., 1995, pp. 629-30. | |
| ITALY | Certificates need to be traded on regulated markets. The Italian certificate of deposit is not dematerialised and needs an endorsement before it can be transferred. | |
| LUXEMBOURG | There are no specific rules dealing with the trading of such instruments, which basically trade like any other securities. | |
| THE NETHERLANDS | Buy-back by the issuer is possible but unusual. | |
| AUSTRIA | OTC. | |
| PORTUGAL | According to Article 2(5) of Decree-Law No. 372/91, credit institutions may acquire the certificates of deposit that they issue. | |

| | | |
|-----------------------|---|--|
| 6 | Trading | |
| FINLAND | Proprietary rights in a certificate of deposit rest with the bearer of the instrument, under a general rule set out in Section 13 of the Law on Promissory Notes. | |
| SWEDEN | | |
| UNITED KINGDOM | | |
| USA | CDs issued directly by a bank are usually not traded and are subject to early withdrawal penalties for early termination. If a broker sells the CD, it will typically attempt to find a secondary market for the transfer of the CD and the bank will accommodate the transfers on its books. | |

| 7 | Nature of rights |
|-----------------|--|
| BELGIUM | The rules on transfer of proprietary rights to certificates of deposit are set out in Article 6 of the Law of 22 July 1991. This stipulates that proprietary rights are established by being written in a register held by the issuer. |
| DENMARK | |
| GERMANY | CDs are normally issued as securitised debt instruments (Schuldverschreibung, sections 793 seq. Civil Code), and the general securities and safe custody laws apply. Exceptionally, CDs could be issued as unsecuritised debt (Schuldschein), in which case the investor holds an unsecuritised claim. |
| GREECE | |
| SPAIN | <p>To establish proprietary rights to dematerialised titles, they must be written in the relevant registry (Law, Article 8). For securities not admitted to negotiation in official secondary markets, the issuer chooses the register among those authorised for this activity (i.e. credit institutions). For securities admitted to negotiation in secondary markets, the registry is that of the relevant market, in this case the registry of the SCLV (Servicio de Compensacion y Liquidacion de Valores: settlement and clearing system of the Spanish stock exchange).</p> <p>Registered securities are fungible. The transfer of rights takes place by account transfer, which when put in writing has the same effects as a transfer of title, and comes into force vis-à-vis third parties from the moment it is written down. A third party acquiring the title from the person identified by the registry as able to transfer the title cannot be successfully challenged (Law, Article 9).</p> <p>The system of the representation of securities in accounts is further regulated by Royal -Decree 116/1992, of 14 February.</p> |
| FRANCE | Under Article L. 213-2 of the Financial and Monetary Code, TCN are issued in bearer form and are recorded in the books of authorised intermediaries (book entry system). Title is evidenced by book entries and no physical document of title is issued. |
| IRELAND | Insofar as the negotiability of certificates of deposit would be recognised by the courts as established by mercantile usage, see Roy Goode, Commercial Law pp. 629-30 (2 nd ed. 1995), it should follow logically that proprietary rights attach to the holder of such a negotiable instrument |
| ITALY | The certificates of deposit are negotiable instruments. |
| LUXEMBOURG | The holder of the instrument has a contractual claim against the issuer of the instrument and a right in rem against the depository of such instruments. Article 6 of the Law of 1 August 2001 defines the proprietary rights accorded to the investor as “real and incorporeal rights” over the pool of assets. |
| THE NETHERLANDS | There are no specific rules or regulations in this regard. General Dutch civil/commercial law applies. |

| 7 | Nature of rights |
|----------------|--|
| AUSTRIA | General civil law rules apply. CDs issued as registered securities can only be transferred by assignment. |
| PORTUGAL | Under Article 2(1), the rights associated to certificates of deposit rest with their bearer and can be transferred. According to paragraph 4 of this Article, the transferred rights only become effective after the transferee has notified the issuing credit institutions of the transfer. Furthermore, as evident from paragraph 3 of the Article at stake, the issuing credit institutions must keep updated records on the issues of certificates of deposits and the transfers of right associated to them. |
| FINLAND | The right of the holder of the certificate of deposit arises from Section 1 of the Law on Promissory Notes, which explicitly states the obligation to repay debts under promissory notes. |
| SWEDEN | |
| UNITED KINGDOM | |
| USA | There are no specific rules on the rights of a holder. The instruments are general unsecured obligations of the issuer. Under general commercial law, the registered holder can transfer its rights unless prohibited by the instrument (and subject to the securities laws). CDs are usually non-transferable when sold directly by the bank. |

| 8 | Procedures for clearing and settlement | |
|---------|---|--|
| BELGIUM | Settlement takes place in the National Bank of Belgium (NBB) accounts. | |
| DENMARK | | |
| GERMANY | Usually, the settlement takes place on accounts of Clearstream Frankfurt (and/or on the books of the intermediary). Normally, CDs are held immobilised with a global note in Clearstream Frankfurt. | |
| GREECE | | |
| SPAIN | If traded in an official secondary market, issued certificates of deposit must be registered with the SCLV, except for singular titles. The SCLV has exclusive rights for the registry, clearing and settlement of securities traded in the stock exchanges and other official secondary markets. | |
| FRANCE | Issuers of TCN must elect domicile (place of payment) with and appoint a domiciling institution (a credit institution or investment firm established in France, Caisse des Dépôts or a French branch of an EU credit institution or an investment firm authorised to keep cash accounts in France). See Articles 6.3.10 to 6.3.12, Title 6, Custody and account-keeping of financial instruments of the General Regulations of the Conseil des Marchés Financiers. Before any issue of TCN, a written agreement must be concluded between the issuer and a domiciling institution responsible for ensuring the regularity of the conditions of issue. Authorised domiciling institutions are those indicated in the ministerial order implementing the above-mentioned Decree and the regulations of the CRBF, i.e. credit institutions, investment firms and the Caisse des Dépôts. The domiciling institution is responsible, among other things, for ensuring that the amount of the issue corresponds exactly to the issuer's instructions and must report the characteristics of the issue to the issuer in the manner specified by the agreement. The domiciling institution will act as transfer and paying agent for the issue and must fulfil the requirements for statistical reporting to the Banque de France set out in the above ministerial order and the regulations of the CRBF. If an issuer decides to have the account of an issue of TCN held at a central depository, the issuer must inform the central depository which domiciling institution the issuer has appointed to transmit its instructions. The central depository will open a separate account for each issue. The central depository shall be responsible for ensuring that the number of securities issued is equal to the number of securities recorded on its books in the names of the custody account-keepers. If an issuer decides not to have the account of an issue of TCN held at a central depository, its domiciling institution is responsible for ensuring that the number of securities issued is equal to the number of securities recorded on its books in the names of the other custody account-keepers. | |
| IRELAND | No information is available to date. | |

| 8 | Procedures for clearing and settlement | |
|-----------------|--|--|
| ITALY | <p>Certificati di Deposito are issued in a centralised but not necessarily dematerialised form, judging by Article 28, 3°, D.lg. n. 213/98 concerning the introduction of the euro (“Decreto Euro”); from “Istruzioni di Vigilanza” of Banca d’Italia, cap. V. (Raccolta in titoli delle banche”/”Fund raising by way of issuing securities of banks”), Article 2, 5°; and from Article 23 (“Strumenti finanziari immessi nel sistema in regime di dematerializzazione”/ “Financial instruments cleared in a system in dematerialised form”), CONSOB resolution n. 11678 of 23/12/98 and the following amendments.</p> <p>According to CONSOB resolution n. 12479 and the Decree of the Ministry of Treasury of 23 August 2000, all securities normally traded on the money market are eligible for deposit at Monte Titoli and can be transferred through it.</p> | |
| LUXEMBOURG | There are no specific procedures for clearing and settlement of these instruments. They are cleared and settled like any other types of securities. | |
| THE NETHERLANDS | There are no specific rules or regulations in this regard. General Dutch civil/commercial law applies. | |
| AUSTRIA | Settlement through the national CSD as well as an international CSD is possible. | |
| PORTUGAL | There are no specific rules or regulations in this regard. | |
| FINLAND | Domestic settlement is through the Central Securities Depository (APK). Both parties would be bound by the Rules of the APK. | |
| SWEDEN | | |
| UNITED KINGDOM | | |
| USA | CDs are in book entry form with the bank. The bank will record the owners on its books when it receives of the funds either directly from the purchaser (where sold directly) or the broker, and will not issue any CD before receiving them. | |

| 9 | Taxation and stamp duty | |
|---------|---|--|
| BELGIUM | Article 10 of the Law of 22 July 1991 introduces an amendment to the Code on Stamp Duty (<i>Code des taxes assimilées au timbre</i>) that makes the rules laid down in Article 126(1) of the Code to be applicable to certificates of deposit. | |
| DENMARK | | |
| GERMANY | No stamp duty. The capital gains tax (Kapitalertragssteuer) is levied by banks (usually 30%) that have safe custody accounts for investors. | |
| GREECE | | |
| SPAIN | Final taxation could depend on whether the income (from the coupon or at maturity) is generated for up to two years or not. Applying a withholding tax and formal duties is the general practice regulated in Law 40/1998 (“Individuals Income Tax”), Law 43/1995 (“Corporate Income Tax”) and Law 41/1998 (“Non Residents Income Tax”). | |
| FRANCE | Withholding tax. Under Article 125III of the French General Tax Code, interest paid by a French borrower to a non-resident is subject to a 15 % French withholding tax. An exemption to this withholding tax, however, generally applies to interest paid on French law governing TCNs. | |
| IRELAND | Under Section 19 of the Finance Bill 2002 currently pending before the Oireachtas (Irish Parliament), interest paid by financial institutions on certificates of deposit is subject to deposit interest retention tax (DIRT) because the amount received by the institution for the certificate of deposit is treated in the same way as any other deposit made with a financial institution for the purposes of applying DIRT. | |
| ITALY | Interests and other benefits are taxed at 27 % directly by the bank (withholding agent) (see Article 26 of the Presidential Decree 29 September 1973 No. 600 as amended by Article 12 of the Legislative Decree 21 November 1997 No. 461). A withholding tax of 12.5 % is still applied to interest paid by the “new” Italian certificate of deposit (called “Cambiale Finanziaria”). Proceeds cumulate with the normal revenues of the company only in the case of the “old” certificate of deposit (called “Polizza di Credito Commerciale”). A stamp duty of 0.01 % applies to the Cambiale Finanziaria. | |

| 9 | Taxation and stamp duty |
|-----------------|--|
| LUXEMBOURG | <p>A. Corporate tax aspects A Luxembourg bank acquiring a CD will record a security or a loan portfolio in its accounts depending on the case (see accounting treatment). Income realised connected to the CD (capital gains or interest) is taxable according to the accounting treatment (if the income is recorded on an accrued basis, it is taxable on an accrued basis). If a foreign tax is levied on the interest earned on the CD, this tax should be creditable against the corporate income tax of the Luxembourg bank under the domestic or treaty tax credit system. Foreign tax that is not creditable should be deductible. The CD increases the net worth tax basis of the Luxembourg bank. Debts incurred to acquire the CD are, however, deductible from the net worth tax basis, so in such a case the acquisition of a CD is neutral in terms of net worth tax.</p> <p>If a foreign company acquires a CD from a Luxembourg bank, the taxation of the income in its hands depends on the foreign tax law. Income derived from the CD with source in Luxembourg will not be subject to Luxembourg tax.</p> <p>B. Individual tax aspects B.1 Resident investors Income tax Resident investors are subject to taxation on interest income if they meet the conditions to file an income tax return. A tax deduction of LUF 60,000 (doubled for spouses who are taxed jointly) is available for all taxable investment income. Income tax rates are progressive and vary from 0 to 47.15%. In addition, the 1% dependency contribution is due.</p> <p>Wealth tax Residents in Luxembourg are subject to Luxembourg wealth tax at a flat rate of 0.5% on the value of their certificates of deposit, under reserve of exemptions provided by Luxembourg law.</p> <p>B.2 Non-resident taxpayers Non-residents in Luxembourg are neither taxed in Luxembourg on interest from CDs, nor subject to Luxembourg wealth tax on their CDs.</p> <p>C. VAT tax aspects Supplies of services related to transaction in shares should be considered as transactions related to debentures and securities and therefore exempt from VAT. Thus, they do not entitle CD holders to deduct input VAT unless they transfer the certificates to persons established outside the EU.</p> <p>However, the management and safekeeping of such certificates will not be exempted and will leave open the right to deduct input VAT. They will be liable to Luxembourg VAT at the rate of 12% if the recipient of the service is established in Luxembourg or is a non-taxable person established in another EU Member State. They are not liable to Luxembourg VAT when the recipient is a taxable person located in another EU Member State or a person established outside the EU. But, in this case, these transactions might be liable to VAT in the country of the recipient of the service.</p> |
| THE NETHERLANDS | No stamp duty. As regards income tax, proceeds cumulate with normal revenues of the company. No withholding tax is applied. |

| 9 | Taxation and stamp duty | |
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| AUSTRIA | There is no securities transaction tax. Austrian residents are subject to a withholding tax on interests. | |
| PORTUGAL | Under Article 71(3)(a) of the IRS Code (Individuals Taxation Code), and Articles 80(2)(c) and 88(1)(c) of the IRC Code (Companies Taxation Code), the interests on certificates of deposit are taxed at the rate of 20% directly by the issuing credit institution (tax deduction at source) but exempted from stamp tax. | |
| FINLAND | | |
| SWEDEN | | |
| UNITED KINGDOM | | |
| USA | Other than income taxes on the interest or imputed interest and capital gains taxes on sales, there are no taxes inherent with these instruments. Withholding taxes would presumably apply to interest payments on CDs sold to non-US entities that are not exempt from withholding taxes. | |

| 10 | Supervisory and regulatory aspects | |
|---------|--|--|
| BELGIUM | The Banking Commission (CBF) is responsible for approving the prospectus and supervising the issue. | |
| DENMARK | | |
| GERMANY | The Federal Financial Supervisory Agency (BAFin) is in charge of supervising banks, financial-services institutions and insurance undertakings across the entire financial market. Hence, the functions of the former offices for banking supervision (BAKred), insurance supervision (BAV), and securities supervision (BAWe) have been combined in one single supervisory authority. The solvency of financial intermediaries issuing or purchasing CDs is supervised by the BAFin. The BAFin is also the statutory depository for prospectuses. | |
| GREECE | | |
| SPAIN | <p>The CNMV, the Spanish securities supervision agency, is in charge of supervising the issue and trading of certificates of deposit, as with other securities. No specific supervisory rules apply to CDs. The CNMV may suspend issue or trading of any securities under its supervision.</p> <p>Generally, no prior authorisation is required for issue (other than prior verification by the CNMV), except for securities with an interest linked to price indexes (Ministerial Order of 28 May 1999). Nevertheless, the issue must be notified to the CNMV, with the verification and registration of the prospectus documents on the characteristics of the CDs issued, and the issuer's audit reports and annual accounts. These requirements do not apply to issues of securities with a maturity of less than 12 months that are addressed exclusively to clients, or to public institutions. The requirements to register audit reports, annual accounts and the prospectus do not apply to issues addressed to public institutions, to less than 50 investors, to the staff of the institution, or to those whose total value is less than EUR 6,010,121, or to issues of securities with a unit value of less than EUR 150,235.</p> | |
| FRANCE | Banque de France (BdF) is the competent authority supervising the TCN market. BdF must control the conditions for the issuance of TCN. It has the power to suspend or prohibit issuance of TCN if the issuer fails to comply with the conditions laid down for such issuance. BdF is informed of any new entrant on the TCN market and receives the "Dossier de présentation financière" (Information Memorandum) (see point 5 above). However, it shares with COB this competence to control the information to be provided, when the issuer does not provide any rating. | |
| IRELAND | The Central Bank of Ireland is responsible for licensing and supervising banks in the conduct of banking business, including the issuance of certificates of deposit. | |
| ITALY | Banca d'Italia must be notified in advance of the issuance of certificates of deposit with non-standard characteristics, following the procedure laid down by Article 129 of the Consolidated Banking Law. | |

| 10 | Supervisory and regulatory aspects |
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| LUXEMBOURG | <p>To calculate the capital requirements to cover foreign exchange risk, credit institutions must include the certificates of deposit denominated in foreign currencies in the net open positions by currency. The net global positions (defined as the sum of all long positions by currency on one hand and the sum of all short positions by currency on the other hand) are computed, the higher of which is submitted to an 8% capital requirement in excess of 2% of the eligible own funds.</p> <p>An alternative method based on statistics may be used by the credit institutions.</p> <p>Issued certificates of deposit are not subject to any capital requirement to cover credit risk. Purchased certificates of deposits, if they are part of the banking book, are subject to capital requirements to cover credit risk by applying a weighting depending on the quality of the counterpart.</p> <p>If those certificates are part of the trading book, transactions unsettled after their due delivery dates (spot or forward sale or purchase of securities) and free deliveries (undelivered but purchased and paid securities or unpaid but sold and delivered securities) are subject to capital requirements to cover settlement/delivery risk and counterpart risk. Those requirements are calculated as a percentage applied either on the difference between the market value and the settlement value or directly on the settlement value. Those percentages are increasing with the quality of the counterpart and the ageing of the unsettled transaction.</p> <p>Certificates of deposit from the trading book are subject to a specific capital requirement to cover the interest rate risk. Capital requirements must be sufficient to cover the specific risk (risk of a price change in the certificate of deposit due to factors related to the issuer of the certificate) and the general risk (risk of a price change in the certificate due to a change in the level of the interest rates).</p> <p>Finally, the certificates included in the trading book are subject to an additional capital requirement due to excesses over the limits of large exposures. This requirement equals 200% minimum weighting on the capital requirement to cover the specific risk mentioned above and is subject to multiplication factors as from the 11th day following the excess.</p> <p>Public offering of securities requires the issuance of a prospectus and certain publications in Luxembourg which are subject to the approval of the Commission de Surveillance du Secteur Financier. Depending on the circumstances, Luxembourg entities that regularly issue these types of instruments may be regarded as taking deposits from the public and may thus need a banking licence. Issuers of securities do not need to report these issues to the supervisory authority.</p> |
| THE NETHERLANDS | <p>The Securities Commission (as per the Act on the Supervision of the Securities Trade 1995) and De Nederlandsche Bank (as per the Act on the Supervision of Credit Institutions 1992) are in charge of supervision.</p> |
| AUSTRIA | <p>The Austrian Securities Authority is responsible for investigating and overseeing the activities of market participants (credit institutions, issuers, investment services providers, securities exchange).</p> |
| PORTUGAL | <p>Banco de Portugal is the competent authority to supervise credit institutions and also to supervise the issuance of certificates of deposit. Further to the information duties that the Banco de Portugal can impose on issuing credit institutions, Article 8 of Decree-Law No. 372/91 remits to the supervisory and regulatory powers vested to it by its organic law.</p> |
| FINLAND | <p>The Finnish Financial Supervisory Authority (FSA) operates in connection with the Bank of Finland but is a functionally independent body. It supervises the financial markets and their participants. The Capital Markets Department of the FSA, in particular, monitors securities markets practices and issuers' compliance with disclosure requirements.</p> |

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| 10 | Supervisory and regulatory aspects | |
| SWEDEN | | |
| UNITED KINGDOM | | |
| USA | As stated above, as bank deposits, CDs are subject to bank regulatory authority supervision. | |

ANNEX II
to the EFMLG report on legal aspects of short-term securities

COMMERCIAL PAPER

2 September 2002

ANNEX II

Commercial Paper

| 1 | Legal basis |
|---------|--|
| BELGIUM | "Thesauriebewijzen/Billets de trésorie" (TBT or Treasury Notes) is the legal name chosen by the Belgian legislator to define CP issued under Belgian Law (Law on Commercial Paper and Certificates of Deposit of 22 July 1991 and Royal Decree on Commercial Paper and Certificates of Deposit of 14 October 1991). |
| DENMARK | |
| GERMANY | The general rules in the Civil Code (Bürgerliches Gesetzbuch), in particular sections 793 seq. of the Civil Code, and in supervisory law apply. Specific definitions are in section 1(11) Nr. 2(3) of the Banking Act (Kreditwesengesetz) of 1998, section 2(1a) of the Securities Trading Act (Wertpapierhandelsgesetz), section 7a(2) of the UCITS-Act (Kapitalanlagegesellschaftsgesetz) ('money market instruments'). |
| GREECE | 3.3.2.1 Development of CP market is put off until the tax regime is harmonised with the EU |
| SPAIN | Law 24/1988 of 28 July on the Securities Market (<i>Ley del Mercado de Valores</i> , "the Law"), and implementing legislation including Royal Decree 291/1992 of 27 March on Issue and Public Offerings of Securities (<i>Real Decreto sobre Emisiones y Ofertas Publicas de Venta de Valores</i> , "the Decree"). Law of Public Limited Companies (as published by Royal-Decree 1564/1989 of 22 December), defines the general rules applicable to the issuance by companies of debt securities. No specific legislation regulates CP. Many aspects of its definition, legal status and issue are "soft law". |
| FRANCE | Article L. 213-1 of the French Financial and Monetary Code defines negotiable debt securities ("Titres de Créances Négociables" -TCN-) as " <i>titres émis au gré de l'émetteur, négociables sur un marché réglementé ou de gré à gré, qui représentent chacun un droit de créance pour une durée déterminée</i> ". They are negotiable debt securities issued at the issuer's initiative and traded on a regulated market or over the counter, and each represents a fixed-term debt. This definition covers in particular "certificats de dépôt" (certificates of deposit), "billets de trésorerie" (CP) and "bons à moyen terme négociables" (Medium-Term Notes). Conditions of issuance are defined in Articles L. 213-2 to Article L. 213-4 of the Code and by Decrees and CRBF Regulations (See Decree n°92-137 of 13 February 1992 regarding TCN and amended by Decree n°98-1316 of 31 December 1998 and Regulation of CRBF n°98-08 of 7 December 1998 and Arrêté of 31 December 1998.) Decree n°98-1316 defines general principles applicable to all kinds of TCN. The CRBF Regulation n°98-08 defines the rules applicable to the issuance by credit institutions and investment firms, respectively of certificates of deposit and of CP as well as the issuance of MTN by both categories of issuers. Arrêté of 31 December 1998 defines the rules applicable to securities issued by non-financial entities (CP and MTN of industrial and commercial undertakings). |

| 1 | Legal basis |
|-----------------|---|
| IRELAND | The Central Bank of Ireland, in its capacity as the competent authority for the licensing and supervision of credit institutions, has issued a Notice (BSD CP 1/98) exempting issuers of CP from the requirement to hold a licence for carrying on a banking business if they satisfy certain conditions. This Notice, issued pursuant to the exercise of the Central Bank of Ireland's statutory powers, provides the legal basis for the issuance of CP by entities which are not licensed as credit institutions. None of the provisions of the notice applies to paper issued by or on behalf of the Irish State or any other Member State of the European Union. |
| ITALY | In Italy the Law 13-1-1994, n. 43 regulates the "cambiale finanziaria". The general rules related to promissory notes are applicable to it. An atypical instrument called "polizza di credito commerciale" is also known in the Italian market. |
| LUXEMBOURG | None (various legal provisions have of course an impact on CPs). |
| THE NETHERLANDS | The Act on the Supervision of Credit Institutions 1992 (<i>Wet toezicht kredietwezen</i>) and implementing rules and regulations, the Act on the Supervision of Securities Trade (<i>Wet toezicht effectenverkeer</i>) and implementing rules and regulations. |
| AUSTRIA | The general legal basis is the commercial certificate of obligation according to section 363 Commercial Code and the principle of freedom of contract. |
| PORTUGAL | Decree-Law No. 181/92 of 22 August 1992, as amended by Decree-Law No. 231/94 of 14 September 1994, Decree-Law No. 343/98 of 6 November 1998 and Decree-Law No. 26/2000 of 3 March 2000. |
| FINLAND | The Securities Markets Act (495/1989) contains a broad definition of financial instruments. CP would seem to fall within the definition in Chapter 1, Section 2(3). |
| SWEDEN | Negotiable debt instruments payable to the holder issued under the Act (1936:82) on Debt Instruments. |
| UNITED KINGDOM | On the assumption that most ECP programmes are governed by English law, the English law legal basis is physical bearer paper containing a promise to pay. This is based purely on English common law concepts. |
| USA | Other than the Securities Act, which governs how these instruments may be sold, there is no particular law governing CP. |

| 2 | Legal definitions |
|----------------|--|
| BELGIUM | TBT are defined as debt instruments created for a limited period of time by Article 1 §1 of the Law on Commercial Paper and Certificates of Deposit of 22 July 1991, and when issued by credit institutions are called " <i>Depositbewijzen/Certificats de dépôt</i> " (CD or Certificates of Deposit). Under Belgian law, TBT may be issued for maturities exceeding one year. |
| DENMARK | |
| GERMANY | Debt security (section 793 seq. of the Civil Code), usually issued by a (non-financial) corporate. Under German law a CP is a security. |
| GREECE | |
| SPAIN | CP is called " <i>pagarés de empresa</i> " or " <i>pagarés financieros</i> ". No legal definition. CP's legal status is subject to diverse doctrinal interpretations. |
| FRANCE | Article L. 213-1 of the French Financial and Monetary Code defines "Titres de Créances Négociables" (TCN) as "titres émis au gré de l'émetteur, négociables sur un marché réglementé ou de gré à gré, qui représentent chacun un droit de créance pour une durée déterminée" (see 1). This definition covers "billets de trésorerie" (commercial paper). According to Arrêté of 31 December 1998 and CRBF Regulation of 7 December 1998, CP must have a fixed maturity date, an initial maturity of at least one day and a unit value equivalent to at least EUR 150,000. Their maximum maturity must not exceed one year. |
| IRELAND | CP has been defined as short-term unsecured, unsubordinated promissory notes which are negotiable instruments issued by private issuers. See Agnes Foy, <i>The Capital Markets: Irish and international law and regulations</i> Round Hall Sweet & Maxwell 1998, p. 158. CP would fall within the statutory definition of a "debenture" under section 2(1) of the Companies Act, 1963 and within the definition of a "debt security" under the Irish Regulations implementing the Listing Particulars and Prospectus Directives. For the purpose of the Central Bank of Ireland's Notice BSD CP 1/98, the generic term "commercial paper" is defined as paper or other securities which have an original maturity of less than one year and which involve the issue of securities or other obligations, however described. |

| 2 | Legal definitions |
|-----------------|--|
| ITALY | <p>No legal definition for CP is given in Italian jurisdiction. <i>The “cambiale finanziaria”</i> is a negotiable instrument with maturity from 3 months to 1 year (Article 1, law 43/94). A draft law intended to amend the law 43/1994 is currently under discussion. It extends the minimum duration of the instrument to one month and the maximum duration to 18 months. Other laws contribute to define the concept of cambiali finanziarie. The resolution of CICR of 3/3/94 states that the collection of savings within the public by collecting instruments different from loans (“Obbligazioni”) is allowed for:</p> <ul style="list-style-type: none"> - companies and entities which issue securities in a regulated market; - other companies, provided that the financial statements of the last three financial periods have evidenced net profits. In this case, however, the instruments must be supported by a guarantee - in the extension at least 50% of their subscribing value – released by (i) authorised banks, or (ii) financial companies as set out in Article 107 Tub, or (iii) authorised insurance companies. <p>Such collecting of savings, as provided by law 13/1/94 n. 43, can also be carried out by issuing another type of instrument called “certificati di investimento”.</p> <p>The Decree of the Treasury Minister of 7/10/94 – “concerning the characteristics of Cambiali Finanziarie and Certificati di Investimento and the subjection of such instruments to transparency law concerning contractual conditions” states (Article 1, “Characteristics of Cambiali Finanziarie and of Certificati di Investimento”) that the minimum value for each of the above instruments is 100 million Lire, and sets out the entities which are allowed to collect savings by issuing cambialifinanaziarie.</p> |
| LUXEMBOURG | <p>None.</p> <p>ABBL (Banker’s association) defines it as follows “Commercial papers (CPs) are negotiable bearer unsecured promissory notes with short-term maturities less than a year issued by corporate, public or semi-public entities. These securities are mainly bought by institutional and professional investors. Usually issued at a discount by using a group of dealers, commercial papers are traded on the international secondary market. They are used for the optimisation of cash management: CPs are flexible short-term investments providing a yield depending on the rating of the issuer.”</p> |
| THE NETHERLANDS | <p>Defined in the Credit System Supervision Manual (implementing the Act on the Supervision of the Credit System 1992): short-term negotiable bearer debt instruments issued by issuers other than banks.</p> <p>Commonly: Short-term securities issued by corporate institutions for a maturity ranging from one day to two years with fixed or floating rates. There is a minimum amount of NLG 1,000,000 or EUR 454,000.</p> |
| AUSTRIA | <p>Under Austrian law a CP is a security. There are no special legal definitions. More generally, bonds and other securities are mentioned in several Austrian laws (e.g. the Banking Act, the Securities Deposit Act, the Capital Market Act, the Stock Exchange Act, the Capital transaction Tax Act). However, these acts do not contain express definitions either. For the purposes of banking supervision the Banking Act defines money market papers in its liquidity provisions (section 25 (4) 3. Last sentence). According to this, money market certificates are credit institution bonds which may only be traded between credit institutions that have committed themselves to selling such certificates only to credit institutions.</p> |

| 2 | Legal definitions |
|----------------|--|
| PORTUGAL | <p>Under Article 1 of Decree-Law No. 181/92, commercial paper ('papel comercial') corresponds to short-term securities issued by corporations, including civil, cooperatives, public enterprises and public authorities and private entities and public authorities both vested with legal personality.</p> <p>Two different short-term maturities are set up according to Articles 2(1) and 13 respectively: (i) maturity of less than one year and (ii) maturity of more than one year but less than two years.</p> <p>Placement is either by direct placement (CP with a maturity of more than one year but less than two years) or competitive auction (CP with a maturity of less than one year). In both these cases, CP is considered as a security of a monetary nature, so it is not subject to the Securities Code <i>ex vi</i> its Article 2(2).</p> <p>Under Article 14 of Decree-Law No. 181/92, CP with a maturity of more than one year but less than two years can be placed by means of a competitive auction, which becomes, still according to that legal provision, subject to the Securities Code.</p> |
| FINLAND | <p>The Securities Markets Act (Chapter 1, Section 2 of the Act) does not define CP.</p> <p>In practice such papers are securities issued by Government, local governments, companies, banks and other financial institutions.</p> |
| SWEDEN | <p>Debt instruments (Sw. Företagscertifikat) are tradable securities without maturity and denomination restrictions.</p> |
| UNITED KINGDOM | <p>Applicable definitions derive from UK laws and regulations. Regarding securities laws/regulations, the Public Offers of Securities Regulations 1995 (POS) implemented the EU Prospectus Directive. POS contains definitions of exempt instruments including CP with a maturity of less than one year or a denomination of EUR 40,000 or less. Under the Financial Services and Markets Act (FSMA), the acceptance in the UK by an issuer of the issue proceeds of CP may constitute "deposit taking business". There is an exemption, however, for CP issued to professional investors (as defined in the exemption) in minimum denominations of £ 100,000 or equivalent in foreign currency which should not be deemed to be a "deposit" for this purpose. As CP is an "investment": (a) CP dealers or other intermediaries must be authorised or exempt to carry out investment business in the UK under the FSMA, and (b) information memoranda and related information may be subject to regulation as "investment advertisements" requiring such advertisements to be issued by an FSA authorised person unless an applicable exemption exists. One such exemption is an advertisement issued to persons "sufficiently expert to understand the risks involved".</p> |
| USA | <p>There are no legal/statutory definitions.</p> |

| 3 | Issuance | |
|----------------|---|--|
| BELGIUM | <p>Minimum EUR 250,000.00.</p> <p>The “quasi” medium-term notes that are issued with maturities exceeding one year are issued in a similar way as the short-term TBT except that their tenure exceeds one year and the panel of terms and conditions is wider.</p> <p>Under Article 1 of the Law of 22 July 1991, CP may be issued by corporates or investment funds for claims or corporates established in another EU Member State who have the right, under their respective national laws, to CP.</p> | |
| DENMARK | | |
| GERMANY | <p>No minimum tradable amount is prescribed by law; usually the minimum is over DEM 1,000,000. The issue is normally made as securitised debt on a discount basis, rarely as unsecuritised debt (Schuldschein), in any case the issue is in fungible form.</p> <p>Issuers are banks, corporates, sovereigns, insurance companies and may be domestic and foreign issuers; issuance currency - all OECD currencies; minimum duration 7days; maximum duration 2 years less than 1day; form of interest discounted; settlement rule T+2.</p> | |
| GREECE | | |
| SPAIN | <p>Generally issued by corporations, although there are no restrictions on credit institutions to issue CP.</p> <p>CP is generally issued with a maturity of minimum 7 days and maximum 21 months, although maturity may reach 2 or 3 years. 18 months is the preferred maximum maturity, as it determines the liquidity classification of the title (see next section: rating). These limitations are guidelines of the CNMV (soft law) and established market practice, as the law lays down no requirements on the maturity of CP. Corporations may not issue CP for a total value higher than their subscribed capital plus reserves (Law of Corporations, Article 282) (not applicable to the banks). The law establishes no other limits on the value of CP.</p> <p>Issue can be dematerialised. Regulation in Royal Decree 116/1992.</p> <p>The Law and Decree apply to securities issued in Spanish territory, i.e. addressed to investors resident in Spain (Decree, Article 3)</p> <p>Issuers are banks and corporates; Issuance currency is euro; minimum duration 15 days; form of interest discounted; settlement T+2.</p> | |
| FRANCE | <p>Article L. 213-3 of the French Monetary and Financial Code enumerates the legal entities who may issue TCN, i.e. credit institutions, investment firms, Caisse des Dépôts et Consignations, companies making public offerings (“faisant appel public à l'épargne”), Economic Interest Groupings (EIG), Community institutions and international organisations to which France belongs.</p> <p>French CP is issued in particular by investment firms, companies making public offerings (resident or non-resident) with at least two years of activity, public companies, EIG and Community institutions and international organisations of which France is a member.</p> <p>Since the law “NRE” (New Economic Regulations) of 15 May 2001, local public authorities are also authorised to issue CP and MTN (see Decree n° 2001-930 of 9 October 2001 amending the Decree n° 92-137 of 13 February 1992 regarding TCN, French Gazette of 12 October 2001, p 16023). Dematerialisation is compulsory since 1993.</p> | |

| 3 | Issuance |
|---------|--|
| IRELAND | <p>Under the Central Bank of Ireland's Notice BSD CP 1/98, three classes of person are exempted from the requirement to hold a banking license where the requirement would arise solely from the issue of CP (other than asset-backed CP): (1) either (a) a company or other body corporate, whether Irish or otherwise, or body created under statute, whether Irish or otherwise, the latest audited accounts of which indicate that it has shareholders' funds (meaning paid-up share capital, capital reserves, revenue reserves and minority interests, as disclosed in the most recent audited accounts or appropriate equivalent for a statutory body) of at least 20 million Irish pounds (approximately EUR 25 million) or (b) a company or other body corporate, whether Irish or otherwise, whose CP is guaranteed by a parent, other company or body corporate, or by a statutory body where the guarantor has shareholder's funds of at least 20 million Irish pounds (approximately EUR 25 million) or foreign currency equivalent; (2) a company or other body corporate, whether Irish or otherwise, or a statutory body whose CP is guaranteed by a credit institution or equivalent from an OECD member state; or (3) any OECD member state, or the European Union or a company, other body corporate or statutory body whose CP is guaranteed by any OECD member state or by the European Union.</p> <p>Under the Central Bank of Ireland's Notice BSD CP 1/98, eligible issuers of CP other than asset-backed CP must meet the following criteria: first, the CP must be issued and transferable in minimum amounts of 100,000 Irish pounds (approximately EUR 125,000) or foreign currency equivalent (this does not preclude the CP from being issued or transferable in amounts greater than and not multiples of 100,000 Irish pounds (approximately EUR 125,000)); second, the issuer must notify the Central Bank of Ireland as soon as it starts activity, stating the issuer category under which it claims exemption from the requirement to hold a banking licence; third, all CP issued under the exemption must carry the title 'Commercial Paper' and must identify the issuer by name; fourth, it must be stated explicitly on the face of the CP and, where applicable, in the contract between the investor and the issuer that it is issued in accordance with an exemption from the requirement to hold a banking licence granted by the Central Bank of Ireland; fifth, it must be stated explicitly on the face of the CP and, where applicable, in the contract between the investor and the issuer that the investment does not have the status of a bank deposit, is outside the scope of the Central Bank of Ireland's deposit protection scheme and that issuers are not regulated by the Central Bank of Ireland arising from the issue of CP; and sixth, any issue of CP which is guaranteed must carry a statement to that effect and identify the guarantor by name.</p> <p>Under the Central Bank of Ireland's Notice BSD CP 1/98, a company or other body corporate, whether Irish or otherwise, or a statutory body which issues asset-backed CP is exempt from the requirement to hold a banking license where the requirement would arise solely from the issue of asset-backed CP which meets the following criteria: first, at the time of issue the CP must be backed by assets to at least 100% of the value of the CP issued; second, at the time of issue, the CP must be rated to at least investment grade by one or more recognised rating agencies; third, the CP must be issued and transferable in minimum amounts of 250,000 Irish pounds (approximately EUR 312,500) or foreign currency equivalent (this does not preclude the CP from being issued or transferable in amounts greater than and not multiples of 250,000 Irish pounds (approximately EUR 312,500)); fourth, the issuer must notify the Central Bank of Ireland as soon as it commences activity, stating the issuer category under which it claims exemption from the requirement to hold a banking license; fifth, all CP issued under the exemption must carry the title 'CP' and must identify the issuer by name; sixth, it must be stated explicitly on the face of the CP and, where applicable, in the contract between the investor and the issuer that it is issued in accordance with an exemption from the requirement to hold a banking license granted by the Central Bank of Ireland; seventh, it must be stated explicitly on the face of the CP and, where applicable, in the contract between the investor and the issuer that the investment does not have the status of a bank deposit, is not outside the scope of the Central Bank of Ireland's deposit protection scheme and that issuers are not regulated by the Central Bank of Ireland arising from the issue of CP; and eighth, any issue of CP which is guaranteed must carry a statement to that effect and identify the guarantor by name.</p> <p>The regime established by the Central Bank of Ireland's Notice BSD CP 1/98 does not apply to paper issued by or on behalf of the Irish State or any other Member State of the European Union.</p> |

| 3 | Issuance |
|-----------------|---|
| ITALY | <p>The “cambiale finanziaria” can be issued by companies listed in a regulated market and companies who had profits in the last three years. In the latter case, a guarantee of 50% is requested by a bank, an insurance undertaking or a financial company (Resolution of CICR, 3 March 1994).</p> <p>The above-mentioned draft law states that if the issuance of cambiali finanziarie is supported by a rating such a guarantee will not be required or it will be required for the 25%, if the issuance is made by companies that provided a certificated financial statement to evidence net profits.</p> <p>The issuance of “cambiale finanziaria” and “polizza di credito commerciale” is regulated by “Istruzioni di Vigilanza” of Banca d'Italia, Title IX.</p> <p>Issuance in multi currency possible, minimum amount EUR 52,000; minimum duration 3 months, maximum duration 12 months; form of interest discounted; no standard settlement rule</p> |
| LUXEMBOURG | <p>There is no specific procedure dealing with the issuance. It is generally and in practice considered that certificates of deposit can be issued by banks on an individual and private basis whilst commercial paper (billets de trésorerie) and MTNs (bons à moyen terme négociables) will generally be issued in series and placed either privately or publicly.</p> |
| THE NETHERLANDS | <p>Issuance is generally regulated by the Act on the Supervision of Securities Trade 1995 (<i>Wte 1995</i>) Issuers are banks, corporates and municipals. Maturity ranges from two weeks to two years minus 1 day with fixed or floating rates. There is a minimum amount of NLG 1,000,000 or EUR 454,000; standard settlement T+1 / T+2, issuance currency is euro; form of interest discounted</p> |
| AUSTRIA | <p>Short-term securities (bonds) are issued by corporates, banks and the Austrian Federal Financing Agency (Austrian Treasury Bills). Banks tend to establish multi-currency CP programmes, not used for domestic funding.</p> <p>Issuers are banks, corporates and insurance companies. Domestic and foreign issuers; issuance is in multi-currency; standard settlement rule is T+3</p> |
| PORTUGAL | <p>According to Article 1 of Decree-Law No. 181/92, CP is issued by corporations, cooperatives, public enterprises and all other public and private legal entities, that fulfil the criteria: (a) shareholders’ equity or net assets not lower than EUR 5 million, (b) positive net incomes/assets variations in the last 3 years. No minimum amount for issue is laid down in the legal act at stake.</p> <p>Under Article 4(2) of Decree-Law No. 181/92, dematerialisation of commercial paper is allowed, subject to the conditions laid down by the Banco de Portugal.</p> <p>The issue of CP is not subject to a commercial register, as flows from Article 2(4) of Decree-Law No. 181/92.</p> <p>Maturities between 7 days and 12 months. Issuance in multi-currency is possible. Form of interest discounted; standard settlement T+2.</p> |
| FINLAND | <p>In practice, minimum EUR 100,000. Also by local authorities and banks. Dematerialised. Maturities between 1 month and 12 months, fixed coupon; standard settlement T / T+1 / T+2, issuance currency is euro.</p> |
| SWEDEN | <p>All instruments are issued in book-entry form where the holding of securities is registered on an account with the Swedish Central Depository System (VPC). No restrictions, however, on issuing them in physical form. Minimum denominations of EUR 100,000 or SEK 1,000,000 to avoid prospectus requirements. No legal restrictions on denominations. No restrictions in maturity. No restrictions on entities that may issue, but the market requires a certain rating unless the issue is high yield and subordinated.</p> |

| | | |
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| 3 | Issuance | |
| UNITED KINGDOM | Entities: no restrictions. Currency denomination: no restrictions other than those under the UK laws and regulations discussed in Legal Definitions above. Minimum amounts: no restrictions other than those under the UK laws and regulations discussed in Legal Definitions above. Form: no dematerialised system exists in the UK; the market convention is for an immobilised global certificate lodged with a central securities depository (e.g., Euroclear/Clearstream). | |
| USA | There are no limits on the entities that may issue CP, and both financial and non-financial corporations issue such paper, although financial corporations are the largest issuers. Although there is technically no minimum or maximum maturity for CP, as a practical matter it is limited to 270 days. This is because of the exemption in the 33 Act (section 3(a)(3)) for notes having a maturity of less than nine months. Since virtually all CP is issued under this exemption, this is typically the maximum maturity for CP. The average maturity is probably around 30 days. In terms of size of issue, there is no required minimum. In practice, CP is usually issued in minimum denominations of \$ 100,000. The market is almost completely institutional. | |

| 4 | Rating |
|-----------------|---|
| BELGIUM | Rating not compulsory. |
| DENMARK | |
| GERMANY | Frequent. Normally, rated corporates would issue. Other issuer would use credit support techniques. |
| GREECE | |
| SPAIN | There are no regulatory provisions on rating. The CNMV has a list of securities classified as having high liquidity. This classification is relevant because Money Market Investment Funds must have 60% of their capital invested in high liquidity titles. The classification of a title as "high liquidity" is determined by three criteria: (1) that it is negotiated in a secondary market, (2) that it may be easily transferred, and (3) that it has a maturity of no more than 18 months (Ministerial Order of 31 July 1991). This classification explains why CP is often issued with a maturity less than 18 months to encourage Funds to acquire it. |
| FRANCE | The rating is not compulsory. This rating is obtained from a rating agency expressly mentioned in the list established by the French Ministry of Economy and Finance. Banque de France may also grant issuers a rating. Rated issuers are exempt from applying for a visa to the COB and benefit from a simplified information procedure. |
| IRELAND | Under the Central Bank of Ireland's Notice BSD CP 1/98, an issuer of asset-backed CP is only exempt from the requirement to hold a banking licence where, at the time of issue, the CP is rated to at least investment grade by one or more recognised rating agencies. This requirement does not apply to non-asset backed CP, which have stricter issuer eligibility criteria. |
| ITALY | Rating not compulsory. |
| LUXEMBOURG | No provisions on rating. |
| THE NETHERLANDS | Rating not compulsory. |
| AUSTRIA | No provisions on rating. |
| PORTUGAL | According to Article 7(1)(f) of Decree-Law No. 181/92, rating by a company registered in <i>Comissão de Mercado de Valores Mobiliários</i> (CMVM) is compulsory, unless the payment responsibilities are guaranteed by a credit institution. |

| 4 | Rating | |
|----------------|--|--|
| FINLAND | Under Chapter 3, Section 11 of the Securities Markets Act, the Stock Exchange may list an instrument such as a CP that has been issued to the public, if the issuer is a member of the Stock Exchange and applies for such listing. | |
| SWEDEN | No legal rating requirements but the market normally requires a K 1 rating. | |
| UNITED KINGDOM | Ratings are not compulsory as a matter of UK law or regulation. They are purely driven by market convention. | |
| USA | As a practical matter, although not “required”, CP must be rated by one or more rating agencies to enable them to sell it. The vast majority of CP must be rated in the highest CP category (A-1/P-1) in order to sell, although recently some paper rated in the second category has been sold. | |

| 5 | Investors and prospectuses |
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| BELGIUM | For each CP programme a prospectus is to be made available in accordance with Article 5 of the Law on Commercial Paper and Certificates of Deposit of 22 July 1991 and part 2 of the Royal Decree on Commercial Paper and Certificates of Deposit of 14 October 1991. The prospectus must be lodged with the Banking Commission (CBF) and agreed by the same authority. |
| DENMARK | |
| GERMANY | A prospectus is required under section 7 of the Prospectus Act (Verkaufsprospektgesetz) of 1998. In practice, exemptions apply in case of restricted subscribers, minimum tradable lots beyond DEM 80.000 or maturities below 1 year. Prospectuses have to be deposited with the Federal Financial Supervisory Agency (BAFin). |
| GREECE | |
| SPAIN | <p>Under the Law, Article 26(d)), before issue, a prospectus must be presented to and registered (with some exceptions) with the CNMV (Comisión Nacional del Mercado de Valores: Spanish securities supervision agency). The prospectus must contain enough information for an investor to make a judgement on the proposed investment. It must state the conclusion of the mandatory audits as per Article 27 of the Law, the obligations derived from the securities, and the procedure for placing the security on the market. The prospectus must follow the models approved by the CNMV (see CNMV Circular 2/1999) and fulfil a series of minimum formal requirements. Correction of mistakes or relevant ex-post information must be included in a supplement. (Decree, Article 15-23)</p> <p>The public offer must take place within a month of registering the prospectus with the CNMV (Decree, Article 25).</p> <p>In the case of international offers (i.e., including non-Spanish residents) the prospectus must include all information provided to foreign investors, even if not required by Spanish legislation. All information must be translated into Spanish (Decree, Article 26).</p> <p>In the case of issuers not resident in Spain, the required audit must comply with the legislation of the place of residence of the issuer. If this is outside the EU, the CNMV may require additional clarification with regard to the applicable norms.</p> <p>As CP tends to have a short maturity, its issue would often be exempt from the requirement for prior registration of a prospectus with the CNMV (applicable to issues with a maturity of less than 12 months).</p> |
| FRANCE | No prospectus requirements. However, under Article L. 213-4 of the French Financial and Monetary Code, the issuers of TCN are under an obligation to give certain information about their economic and financial situation and their issuing programme. A Decree specifies the content of these obligations and the conditions of publicity. The COB is responsible for ensuring that these obligations are fulfilled (especially when issuers do not provide any rating and must apply for a visa of the COB). The information document to be presented by issuers is called "Dossier de présentation financière" (Information Memorandum) and communicated to BdF. |

| 5 | Investors and prospectuses |
|-----------------|--|
| IRELAND | Taking a CP to be a negotiable instrument, it is a debt security subject to the general rules on the issuance of debt securities under Irish law. The prospectus requirements of the Companies Act, 1963, apply to notes offered and placed publicly. In the absence of clear statutory or common law guidance on the scope of the private placement exemption, market participants have taken steps to ensure that a prospectus is not needed when issuing CP. One approach has been for the issuer and the bank acting as the issuer's agent in offering the notes to agree on a maximum list of 20 potential purchasers. All invitations and offers are made orally, and only confirmed in writing after oral agreement. Additional safeguards would be that the agent would contact not more than five purchasers on any one day and/or would make an offer only to persons who expressed an interest in the notes and/or would not disclose the identity of the issuer to potential purchasers in the initial stages of the offering. The facility letter would also contain additional safeguards designed to avoid a secondary market in the issuer's notes. See Johnston, <i>Banking and Security Law in Ireland pp. 219-21</i> . Under the Central Bank of Ireland's Notice (BSD CP 1/98) exempting issuers of CP from the requirement to hold a licence to carry on a banking business, all CP issued under the exemption must carry the title 'Commercial Paper' and must identify the issuer by name. It must be stated explicitly on the face of the CP that it is issued in accordance with this exemption from holding a banking licence, that the investment does not have the status of a bank deposit, and is not outside the scope of the Central Bank of Ireland's deposit protection scheme; and that issuers are not regulated by the Central Bank of Ireland in matters arising from the issue of CP. Any issue of CP which is guaranteed must state this and identify the guarantor by name. |
| ITALY | There is no obligation to issue a prospectus. The "Istruzioni di Vigilanza" of Banca d'Italia lays down the main features that are mandatory for cambiale finanziaria and polizza di credito commerciale. The issuance of certificates with features different from those laid down by the "Istruzioni" must first be notified to Banca d'Italia following the procedure in Article 129 of the Consolidated Banking Law. |
| LUXEMBOURG | A prospectus is only required if the instruments are offered to the public in Luxembourg or listed on the Luxembourg Stock Exchange. If the instruments are issued under a public programme and listed, then an annual update of the prospectus is required. An update is also required if major events occur that could affect the issuer's creditworthiness. |
| THE NETHERLANDS | The Act on the Supervision of Securities Trade 1995 (and further rules and regulations) stipulates the requirements for the prospectus, which must be published unless securities are offered only to professionals, to a select group or only outside the Netherlands. |
| AUSTRIA | Article 2 of the Austrian Capital Market Act requires a prospectus when securities are offered to the public. No prospectus is needed when securities are only offered to limited number of professional investors or in case of continuous issues by credit institutions. |
| PORTUGAL | Under Article 7 of Decree-Law No. 181/92, a prospectus describing the main features of the issuing programme and about the financial situation of the issuer must be released. |
| FINLAND | All issuers of financial instruments, except shares in companies that fall within the scope of the Securities Markets Act are subject to the information requirements in Chapter 2, Section 2 of the Act. Under this provision, anyone who issues securities (e.g. CP) to the public must provide enough information on any circumstances that may substantially affect the value of the securities. |

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| 5 | Investors and prospectuses | |
| SWEDEN | Swedish law does not distinguish between retail and professional investors as such for purposes of restricting sales. It states that debt instruments may only be offered to a non-closed group (Sw öppen krets) if a prospectus fulfilling Swedish requirements has been published, unless is at least SEK 300,000. On the grounds of this exception, no formal prospectuses are published for CP programmes, only brief sales material describing the securities. | |
| UNITED KINGDOM | POS is the applicable legal regime in the UK as discussed in Legal Definitions above. There are no listing or prospectus requirements under POS by virtue of the exemptions for CP with a maturity of under one year or a denomination of EUR 40,000 or more. | |
| USA | Investor protection for these instruments is governed by the 1933 Act. Since CP is issued under an exemption from registration under the 1933 Act, no disclosures are required. However, market practice is to give a simple disclosure document to potential investors. | |

| 6 | Trading | |
|------------------------|--|--|
| BELGIUM | The issuer may restrict trading of CP. Buy-back by the issuer is possible but unusual. | |
| DENMARK | | |
| GERMANY | There are about 150 issuers in the market. Placement is by credit institutions. Due to the short-term nature, an exchange admission is seldom sought for small trading activities (“buy and hold” paper), in the OTC market (listing would be possible but is too expensive). Buy-back is possible but unusual. i.e. there is no liquid secondary market. | |
| GREECE | | |
| SPAIN | There are about 50 issuers in the market. Issues addressed to less than 50 investors are exempt from the requirements of prior registry of a prospectus, audit reports and annual accounts with the CNMV. Before securities can be traded in official markets they must be verified by the CNMV (Law, Article 32.1) and the authority responsible for the secondary market must agree to the sale. CP is traded in the stock exchange and mostly in the official secondary market AIAF (<i>Asociación de Intermediarios de Activos Financieros</i>). The AIAF is a price market (i.e., not blind) for fixed-return titles not offered to the public. If traded outside an official secondary market, the transaction must involve a public notary, or a certified securities agent (<i>sociedad o agencia de valores</i>) unless the title is dematerialised. Generally, CP is documented in accounts. Buy-back would be possible if this is mentioned in a public document (not required for dematerialised CP), and by purchase in the stock exchange. There is good secondary market activity, and papers can be listed at a stock exchange. | |
| FRANCE | Placing and trading is open to any authorised credit institution or investment firm. CP is not listed at a stock exchange. Buy-back is possible by issuers. Transactions must be reported to Banque de France. | |
| IRELAND | CP is in theory negotiable, but in practice every effort is made to ensure that these instruments are issued privately without the need to comply with prospectus requirements. As a result there is no secondary market for Irish CP. Buy-back by issuer is possible but unusual, so there is no secondary market activity and no listing of paper at a stock exchange. | |
| ITALY | Placement is by credit institutions. There is no secondary market activity and no listing of paper at a stock exchange. | |
| LUXEMBOURG | There are no specific rules dealing with the trading of such instruments, which basically trade like any other securities. | |
| THE NETHERLANDS | Buy-back by issuer is possible but unusual. There are only a small number of issuers (max. 10), no secondary market activity, and no listing of paper at a stock exchange. | |

| 6 | Trading | |
|----------------|--|--|
| AUSTRIA | There are more than 200 issuers in the market. OTC. In principle, CP can be admitted to trading at the Stock Exchange provided the requirements set out in the Stock Exchange Act are met. There is secondary market activity. | |
| PORTUGAL | Under Article 2(1) of Decree-Law No. 181/92, buy-back is admitted but only before the maturity deadline expires. | |
| FINLAND | Buy-back by the issuer is possible but unusual in practice, but not because of Finnish Law. There is a secondary market but no listing of paper at a stock exchange. | |
| SWEDEN | There are no legal requirements on listing but the instruments are exclusively traded OTC. Dealers have a contractual undertaking to maintain a secondary market. There are no selling restrictions but the sales material contains a reminder about foreign selling restrictions. | |
| UNITED KINGDOM | Purchases and sales of CP is regarded as money market activity; secondary trading among market counterparties being subject to the FSA's Inter Professional Code. There are no listing requirements in the UK (in theory issuers can list CP with the London Stock Exchange but the LSE does not like to list instruments with maturities under one year). Selling restrictions are embodied in POS (e.g., CP with a maturity of 365 days may only be sold to professional investors (as defined in the exemption)) and FSMA. Buy-backs are subject to the UK market abuse regime regarding insider trading and market manipulation. | |
| USA | Although CP could theoretically be transferred under a private placement exemption using the 1933 Act, in practice there is no secondary market for CP (the maturities are too short and a secondary buyer seeking a particular maturity could purchase paper directly with that maturity). However, issuers (or if purchased from a dealer, the dealers) are typically willing to repurchase the paper under appropriate circumstances. | |

| 7 | Nature of rights | |
|------------------------|--|--|
| BELGIUM | The rules on transfer of proprietary rights to CP are set out in Article 6 of the Law of 22 July 1991. It stipulates that proprietary rights are established by being written in a register held by the issuer. | |
| DENMARK | | |
| GERMANY | CPs are normally issued as securitised debt instruments (Schuldverschreibung, sections 793 seq. Civil Code), so the general securities and safe custody laws apply. Exceptionally, CP could be issued as unsecuritised debt (Schuldschein), in which case the investor holds an unsecuritised claim. | |
| GREECE | | |
| SPAIN | <p>Proprietary rights of dematerialised titles are established by being written in the relevant registry (Law, Article 8). For securities not admitted to negotiation in official secondary markets, the issuer chooses the register from among those authorised for this activity (i.e. credit institutions). For securities admitted to negotiation in secondary markets, the registry is that of the relevant market, in this case the registry of the SCLV (Servicio de Compensacion y Liquidacion de Valores: settlement and clearing system of the Spanish stock exchange).</p> <p>Registered securities are fungible. The transfer of rights takes place by account transfer, in which case the written record of the transfer has the same effect as that of a transfer of title, and has force vis-à-vis third parties from the moment of the inscription. A third party acquiring the title from the person identified by the registry as able to transfer the title cannot be successfully challenged (Law, Article 9).</p> <p>The system of the representation of securities in accounts is further regulated by Royal-Decree 116/1992 of 14 February.</p> | |
| FRANCE | Guarantees can be provided under specified conditions (See Regulation CRBF n°98-08 of 7 December 1998 and Ministerial Order of 31 December 1998). | |
| IRELAND | Taking CP to be a negotiable instrument, proprietary rights attach to the holder of such a negotiable instrument. | |
| ITALY | Negotiable instrument. The circulation is regulated by the general law on promissory notes. | |
| LUXEMBOURG | The holder of the instrument has a contractual claim against the issuer of the instrument and a right in rem against the depository of such instruments. Article 6 of the Law of 1 August 2001 defines the proprietary rights accorded to the investor as “real and incorporeal rights” over the pool of assets. | |
| THE NETHERLANDS | There are no specific rules or regulations in this regard. General Dutch civil/commercial law applies. | |

| 7 | Nature of rights |
|----------------|--|
| AUSTRIA | General civil law rules apply. |
| PORTUGAL | <p>Under Article 2(5) of Decree-Law No. 181/92, the transfer of CP is only deemed effective when notified by the transferee to the credit institution in which the issuer has registered or deposited the CP.</p> <p>Under Article 2(2) of Decree-Law No. 181/92, buy-back by the issuer is possible (although rather unusual).</p> <p>Under Article 1(3) of Decree-Law No. 181/92, collateral may be provided by credit institutions fulfilling the requirements laid down in Article 6. These requirements are two-fold: (i) the object of the credit institutions at stake must encompass the granting of collateral and (ii) shareholders' equity or net assets must not be lower than EUR 5 million.</p> <p>The granting of collateral by these credit institutions exempts the issuer from fulfilling the requirements laid down in Article 1(2) relating to its shareholders' equity or net assets and the balance sheet figures.</p> |
| FINLAND | The right of the holder of the CP arises from Section 1 of the Law on Promissory Notes (622/1947), which explicitly states the obligation to repay debts under promissory notes. |
| SWEDEN | Each investor's holdings of securities is registered on an account with the book-entry system (VPC). The holder is deemed to be the person registered as the holder on the fifth day before any payment is made under the security. |
| UNITED KINGDOM | Absolute entitlement belongs to the bearer. Bearer paper is a bundle of rights governed by the law of country of location of the securities depository and the depository's terms of business. ECP programmes commonly state that if an issuer defaults, it will provide definitive certificates to account holders as noted on the books and records of the relevant depository; and that if it does not issue such definitive certificates by an agreed date (e.g. 30 days from when the default occurs), a deed of covenant will apply evidencing property rights in favour of the investors, with these rights also applying to the account entries with the relevant depository. |
| USA | There are no specific rules regarding the rights of a holder. The instruments are general unsecured obligations of the issuer (although CP may be secured in some circumstances or otherwise have some backing). Under general commercial law, the registered holder can transfer its rights unless prohibited by the instrument (and subject to the securities laws). |

| 8 | Procedures for clearing and settlement | |
|---------|--|--|
| BELGIUM | Settlement takes place in the National Bank of Belgium (NBB) accounts. | |
| DENMARK | | |
| GERMANY | Usually, the settlement takes place through Deutsche Boerse Clearing Frankfurt or its affiliates. Normally, CPs are held immobilised with a global note. | |
| GREECE | | |
| SPAIN | <p>If traded in an official secondary market, CP must be registered with the SCLV (or a subsidiary agency) with the exception of singular titles. The SCLV has exclusive rights to the registry, clearing and settlement of securities traded in the stock exchanges and other official secondary markets.</p> <p>The regulation of clearing and settlement of securities in Spain will be subject to substantial regulatory changes before the end of this year.</p> | |
| FRANCE | <p>Compulsory domiciliation in a credit institution or an investment firm established in France or Caisse des Dépôts. See Articles 6.3.10 to 6.3.12, Title 6, Custody and account-keeping of financial instruments of the General Regulations of the Conseil des Marchés Financiers. Before any issue of TCN, a written agreement must be concluded between the issuer and a domiciling institution responsible for ensuring the regularity of the conditions of issue. Authorised domiciling institutions are those named in the ministerial order implementing the above-mentioned decree and the regulations of the CRBF, i.e. credit institutions, investment firms and the Caisse des Dépôts. The domiciling institution is responsible, among other things, for ensuring that the amount of the issue corresponds exactly to the instructions received from the issuer and must report the characteristics of the issue to the issuer in the manner specified by the above-mentioned agreement. The domiciling institution acts as transfer and paying agent for the issue and must fulfil the requirements for statistical reporting to the Banque de France set out in the above-mentioned ministerial order and the regulations of the CRBF. If an issuer decides to hold the account of an issue of TCN at a central depository, the issuer must inform the central depository which domiciling institution the issuer has appointed to transmit its instructions. The central depository must open a separate account for each issue. The central depository is responsible for ensuring that the number of securities issued is equal to the number of securities recorded on its books in the names of the custody account-keepers. If an issuer decides not to have the account of an issue of TCN held at a central depository, its domiciling institution is responsible for ensuring that the number of securities issued is equal to the number of securities recorded on its books in the names of the other custody account-keepers.</p> | |
| IRELAND | Since Irish CP is issued in private placements without any secondary market trading, the paper is issued in physical form and there are no procedures for clearing and settling CP transactions. | |

| 8 | Procedures for clearing and settlement |
|-----------------|---|
| ITALY | See the comments on CD. According to CONSOB Resolution n. 12479 and the Decree of the Ministry of Treasury of 23 August 2000, all securities normally traded on the money market are eligible for deposit at Monte Titoli and can be transferred through it. |
| LUXEMBOURG | There are no specific procedures for clearing and settlement of these instruments, which are cleared and settled like any other type of securities. |
| THE NETHERLANDS | There are no specific rules or regulations in this regard. |
| AUSTRIA | Settlement through the national CSD as well as an international CSD is possible. The domestic clearing system is by OEKB. |
| PORTUGAL | There are no specific rules or regulations in this regard. |
| FINLAND | Domestic settlement is through the Central Securities Depository (APK). The parties would both be bound by the rules of the APK. |
| SWEDEN | VPC is the only clearing system in Sweden and its general rules apply to all issued securities. |
| UNITED KINGDOM | There is no central securities depository for CP in the UK. Market practice is to clear ECP transactions through Euroclear or Clearstream. |
| USA | CP is issued in book entry form and settlement is same day. The issuer will not issue the CP if funds are not received that day. |

| 9 | Taxation and stamp duty | |
|----------------|---|--|
| BELGIUM | No withholding tax is applied. Article 10 of the Law of 22 July 1991 introduces an amendment to the Code on Stamp Duty (<i>Code des taxes assimilées au timbre</i>) that makes the rules laid down in Article 126(1) of the Code applicable to certificates of deposit. | |
| DENMARK | | |
| GERMANY | No stamp duty. The capital gains tax (Kapitalertragssteuer) is levied (usually at 30%) by banks with safe custody accounts for investors. | |
| GREECE | | |
| SPAIN | Final taxation could depend on whether the income (from the coupon or at the maturity) is generated over two years or not. Withholding tax and formal duties are treated as general taxation, as regulated in Law 40/1998 ("Individuals Income Tax"), Law 43/1995 ("Corporate Income Tax") and Law 41/1998 ("Non Residents Income Tax")." | |
| FRANCE | Withholding tax: Under Article 125III of the French General Tax Code, interest paid by a French borrower to a non-resident is subject to a 15% French withholding tax. An exemption to this withholding tax, however, generally applies to interest paid on TCNs governed by French law. | |
| IRELAND | Under Section 19 of the Finance Bill 2002 currently pending before the Oireachtas (Irish Parliament), interest paid by financial institutions on CP is subject to deposit interest retention tax (DIRT) because for the purposes of applying DIRT the amount received by the institution for the CP is treated in the same way as any other deposit made with a financial institution. Under Section 246 of the Taxes Consolidation Act 1997 interest paid by a company on euro CP issued by the company must, with certain exceptions, be paid net of tax. | |
| ITALY | Cambiali finanziarie are subject to Article 26 of D.P.R. n. 600/1973 which sets a withholding tax at 12,5% and a reduced stamp duty. CPs are free from stamp duty. As regards income tax: proceeds cumulate with normal revenues of the company: no withholding tax is applied. VAT: as bonds. | |

| 9 | Taxation and stamp duty | |
|------------------------|-------------------------|--|
| LUXEMBOURG | | <p>A. Corporate tax aspects The tax treatment of the CP follows the accounting treatment (please see Accounting): profits accounted for are taxable and charges are deductible. If the Luxembourg bank issues the promissory note, there is no withholding tax on interest, whether to a resident or non-resident taxpayer. If the Luxembourg bank receives interest on a promissory note issued by a non-resident corporation, withholding tax may apply to the interest in that other state. If the other state has signed a double tax treaty with Luxembourg, the withholding tax is avoided or reduced. The foreign tax levied can be credited against the corporate income tax of the bank; the excess credit is deductible. It must be noted that only foreign tax paid can basically be credited against corporate income tax (this condition is stated under Luxembourg domestic law and also usually under tax treaties signed with Luxembourg). Furthermore, the foreign tax can be credited against the corporate income tax of the year during which the foreign-source interest is taxable in Luxembourg. In this respect the question arises of offsetting the foreign tax levied on interest accrued as profit in the accounts of the Luxembourg bank but not yet paid to the Luxembourg bank (e.g. in the case of CP issued at discount, the interest is booked in the P&L pro-rata temporis; see above under Accounting). Under such an hypothesis, assuming that the foreign withholding tax is levied when the interest is paid (which often happens), the income (interest) would be accounted for as profit and taxed during the same year. Assuming a CP issued for more than one year, no foreign withholding tax would apply to the interest accrued as profit in the accounts of the bank (the foreign tax would be levied only on payment of the interest). But the right to offset the foreign tax would not be lost. Indeed, when the foreign tax is assessed and paid after filing the tax return of the Luxembourg bank (or after taxation of the foreign-source interest in Luxembourg), the tax return (or the corporate income tax) must be modified to take into account the foreign tax paid (i.e. offsetting the foreign tax against the corporate income tax). This modification is possible within the statute of limitation. In practice, the tax authorities basically accept the offset of the foreign tax on an accrued basis. It is, however, advisable to get written approval from the tax authorities before making substantial investments in foreign assets which raise this issue. As to the net worth tax, no specific rules apply (please refer to the general principles for details on the common net worth tax regime).</p> <p>B. VAT aspects The issue of CP by a bank is not regarded as a falling within the scope of the VAT. Yet transactions, including negotiation that concern negotiable instruments are exempted from VAT. So the bank that conducts the transactions has no right to apply VAT unless the customer is outside of the EU.</p> |
| THE NETHERLANDS | | No stamp duty. As regards income tax: proceeds cumulate with normal revenues of the company. No withholding tax is applied. |
| AUSTRIA | | There is no securities transaction tax. Austrian residents are subject to a withholding tax on interests. |

| 9 | Taxation and stamp duty | |
|----------------|--|--|
| PORTUGAL | Under Article 71(3)(b) of the IRS Code (Individuals Taxation Code) and Article 80(2)(c) and 88 (1)(c) of the IRC Code (Companies Taxation Code), the interest on CP is subject to taxation at 20% (tax deduction at source), but exempted from stamp tax. Furthermore, the benefits resulting from the transfer of CP are subject to IRC taxation. | |
| FINLAND | | |
| SWEDEN | There is no withholding tax on interest payments in Sweden. There are no other tax considerations if the investor has no connections with Sweden apart from merely holding the security. | |
| UNITED KINGDOM | There is no requirement to deduct withholding tax from interest on CP with a maturity of less than 365 days nor on any interest payments to UK corporates; the withholding rates on interest paid to non-residents on CP with a maturity exceeding one year depends on the terms of the applicable double tax treaty, if any. There is no withholding tax on discount. There is no VAT on the issue or transfer of CP so no entitlement to reclaim VAT on associated costs unless the CP is issued or sold to investors outside the EU or the Isle of Man, in which case the costs are recoverable. The position is the same for the issues or sales. There is no stamp duty on the issue or transfer of CP. | |
| USA | Other than income tax on the interest or imputed interest and capital gains tax on sales, no taxes are inherent with these instruments. | |

| 10 | Supervisory and regulatory aspects | |
|---------|--|--|
| BELGIUM | The Banking Commission (CBF) is responsible for approving the prospectus and supervising the issue. | |
| DENMARK | | |
| GERMANY | Not regulated as far as issue is concerned. The market is following “good market practice”. | |
| GREECE | | |
| SPAIN | <p>The CNMV, Spanish securities supervision agency is in charge of supervising the issue and trading of CP, as with other securities. The CNMV may suspend issue or trading of any securities under its supervision.</p> <p>Generally, no prior authorisation is required for issue, except for securities with an interest linked to price indexes (Ministerial Order of 28 May 1999). Nevertheless, the issue must be communicated to the CNMV, with the submission and registration of documents on the characteristics of the emission, the issuer’s audit reports and annual accounts, and the prospectus. These requirements do not apply to issues of securities with a maturity of less than 12 months that are addressed exclusively to clients, or to public institutions. The requirements to register audit reports, annual accounts and the prospectus do not apply to issues addressed to public institutions, to less than 50 investors, to the staff of the institution, or to those issues whose total value is less than EUR 6,010,121, or to issues of securities with a unit value of less than EUR 150,235.</p> | |
| FRANCE | Banque de France (BdF) is the competent authority supervising the TCN market. BdF must ensure that issuers respect the conditions for issuing TCN. It is vested with the power to suspend or prohibit the issuance of e.g., commercial paper if the issuer fails to comply with the conditions laid down for issuance. BdF is informed of any new entrant on the TCN market and is notified of " Dossier de présentation financière" (see point 5 above). When the issuer does not provide any rating COB specifies the information to be provided (application for a visa for unrated TCN programmes). | |
| IRELAND | The issuance of commercial paper by credit institutions is subject to a supervisory notice issued by the Central Bank of Ireland as the competent authority responsible for the licensing and supervision of credit institutions. | |
| ITALY | The issuance of cambiale finanziaria and CP must first have been notified to Banca d'Italia following the procedure laid down by Article 129 of the Consolidated Banking law. See also Istruzioni di Vigilanza of Banca d'Italia, Title IX. No notification is required for securities with standard characteristics issued for amounts below EUR 50 million. | |

| 10 | Supervisory and regulatory aspects |
|-----------------|---|
| LUXEMBOURG | <p>In calculating capital requirements to cover foreign exchange risk, credit institutions must include the CP denominated in foreign currencies in the net open positions by currency. The net global positions (defined as the sum of all long positions by currency on one hand and the sum of all short positions by currency on the other hand) are computed, and the higher of which is submitted to a 8% capital requirement in excess of 2% of the eligible own funds. Credit unions may use an alternative method based on statistics.</p> <p>Issued CP are not subject to any capital requirement to cover credit risk. Purchased CP, if they are part of the banking book, are subject to capital requirements to cover credit risk by applying a weighting depending on the quality of the counterpart.</p> <p>If those CP are part of the trading book, transactions not yet settled after their due delivery dates (spot or forward sale or purchase of securities) and free deliveries (undelivered but purchased and paid securities or unpaid but sold and delivered securities) are subject to capital requirements to cover settlement/delivery risk and counterpart risk. Those requirements are calculated as a percentage applied either on the difference between the market value and the settlement value or directly on the settlement value. Those percentages increase with the quality of the counterpart and how long the transaction has remained unsettled.</p> <p>CP from the trading book are subject to a specific capital requirement to cover the risk associated with variation in the price of securities. Capital requirements must be sufficient to cover the specific risk (risk of a price change in the instrument due to factors related to the issuer of the certificate) and the general risk (risk of a price change in the certificate due to a change in the overall level of the market).</p> <p>Finally, the certificates included in the trading book are subject to an additional capital requirement due to excesses over the limits of large exposures. This requirement amounts to 200% minimum weighting on the capital requirement to cover the specific risk mentioned above and is subject to multiplication factors as from the 11th day following the excess.</p> <p>The public offering of securities requires the issuance of a prospectus and certain publications in Luxembourg which are subject to the approval of the Commission de Surveillance du Secteur Financier. Luxembourg entities that regularly issue these types of instruments may be considered, depending on the circumstances, as taking of deposits from the public so they may need a banking licence. Issuers of securities need not to report these issues to the supervisory authority.</p> |
| THE NETHERLANDS | The Securities Commission is in charge of supervision as per the Act on the Supervision of the Securities Trade 1995. |
| AUSTRIA | The Austrian Securities Authority is responsible for investigating and overseeing market participants' activities (credit institutions, issuers, investment services providers, securities exchange). |
| PORTUGAL | <p>CP with a maturity of more than one year but less than two years placed by direct placement and CP with a maturity of less than one year placed by competitive auction are considered as monetary securities, so they are subject to the supervisory and regulatory powers of the Banco de Portugal <i>ex vi</i> Decree-Law No. 22/99 of 28 January 1999.</p> <p>CP with a maturity of more than one year but less than two years placed by means of a competitive auction are subject to the legal framework adopted by the Securities Code, so they are subject to the CMVM's supervisory and regulatory powers.</p> |
| FINLAND | The Finnish Financial Supervisory Authority (FSA) operates in connection with the Bank of Finland but is a functionally independent body. It supervises the financial markets and their participants. The Capital Markets Department of the FSA, in particular, monitors securities markets practices and issuers' compliance with disclosure requirements. |

| | | |
|-----------------------|---|--|
| 10 | Supervisory and regulatory aspects | |
| SWEDEN | No central bank consent is required when the programme is established or in connection with each issue. The Financial Supervisory Authority is responsible for licensing and supervising credit authorities. | |
| UNITED KINGDOM | The Financial Service Authority's rules and regulations are aimed at CP dealers and not CP issuers and seek to avoid market abuse with respect to the issuance or secondary trading of CP. In general, the UK CP market enjoys a lighter regulatory regime under the Inter-professional Code because of its money market characteristics and because transactions take place between market counterparties. | |
| USA | Certain types of issuers of CP might be subject to other regulatory authorities that govern the issuer (such as insurance regulation), but generally the issuance and trading of CP are only subject to the securities regulations described above. | |

ANNEX III
to the EFMLG report on legal aspects of short-term securities

MEDIUM-TERM NOTES

2 September 2002

ANNEX III

Medium-Term Notes

| 1 | Legal basis |
|----------------|--|
| BELGIUM | The concept of a medium-term note is not as such, known to Belgian law. A medium-term note would therefore be classified in the same manner as a negotiable instrument that constitutes a debt security (which would include bonds, notes, etc). |
| DENMARK | |
| GERMANY | The general rules in the Civil Code (Bürgerliches Gesetzbuch), in particular sections 793 seq., and in supervisory law apply. Specific definitions are to be found in section 1(11) Nr. 2 (3) of the Banking Act (Kreditwesengesetz) of 1998, section 2 (1a) of the Securities Trading Act (Wertpapierhandelsgesetz), section 7a(2) of the UCITS-Act (Kapitalanlagegesellschaftsgesetz) ("money market instruments"). |
| GREECE | Articles 888-900 of the Greek Civil Code (AK). Under Greek law, the duration of a debt security in bearer form does not affect its legal treatment. For corporate dematerialized MTNs: Articles 3a and 13 of Law 2190/1920 and Article 58 (2) of Law 2533/1997, as amended. For Treasury Bills Article 5 of Law 2198/1994 introducing the dematerialization of Greek government bonds and bills. |
| SPAIN | Law 24/1988 of 28 July on the Securities Market (Ley del Mercado de Valores, "the Law"), and implementing legislation including Royal Decree 291/1992 of 27 March on Issue and Public Offerings of Securities (Real Decreto sobre Emisiones y Ofertas Publicas de Venta de Valores, "the Decree"). The Law of Public Limited Companies (as published by Royal Decree 1564/1989 of 22 December), defines the general rules applicable to the issue of debts securities by such companies. |
| FRANCE | Article L. 213-1 of the French Financial and Monetary Code defines negotiable debt securities ("Titres de Créances Négociables" - TCN-) as "titres émis au gré de l'émetteur, négociables sur un marché réglementé ou de gré à gré, qui représentent chacun un droit de créance pour une durée déterminée". They are negotiable debt securities, each representing a fixed-term debt, which are issued at the initiative of the issuer and traded on a regulated market or over the counter. This definition covers in particular "certificats de dépôt" (certificates of deposit), "billets de trésorerie" (commercial paper) and "bons à moyen terme négociables" (BMTN) (medium-term notes). Conditions of issuance are defined in Articles L.213-2 to Article L.213-4 of the Code and by decrees and CRBF regulations (See Decree n°92-137 of 13 February 1992 regarding TCN and amended by Decree n°98-1316 of 31 December 1998 Regulation of CRBF n°98-08 of 7 December 1998 and Ministerial Order of 31 December 1998). Decree n°98-1316 defines the general principles applicable to all kinds of TCN. The CRBF Regulation n°98-08 defines the rules applicable to the issuance by credit institutions and investment firms of certificates of deposit and of CP respectively, and the issuance of MTN by both categories of issuers. The Ministerial Order of 31 December 1998 defines the rules applicable to securities issued by non-financial entities (commercial paper and MTN of industrial and commercial undertakings). |

| 1 | Legal basis | |
|-----------------|--|--|
| IRELAND | The concept of a medium-term note is not, as such, known to Irish law. MTNs would therefore be classified in the same manner as negotiable instruments that constitutes debt security (which would include bonds, debentures, notes, etc.). | |
| ITALY | MTN are not regulated by Italian law and they can be considered as “atypical instruments”. | |
| LUXEMBOURG | There is no specific procedure dealing with the issuance of MTNs. In practice, certificates of deposit are issued by banks on an individual and private basis while CP (billets de trésorerie) and MTNs (bons à moyen terme négociables) are generally issued in series and placed privately or publicly. | |
| THE NETHERLANDS | The Act on the Supervision of Credit Institutions 1992 (<i>Wet toezicht kredietwezen</i>) and implementing rules and regulations; the Act on the Supervision of Securities Trade (<i>Wet toezicht effectenverkeer</i>) and implementing rules and regulations. | |
| AUSTRIA | The general legal basis is the commercial certificate of obligation according to section 363 Commercial Code and the principle of freedom of contract. | |
| PORTUGAL | The concept of MTNs is not foreseen under Portuguese law. However, according to the criteria of maturity applied to the concept of MTNs, a medium-term security called <i>obrigações de caixa</i> (OCs) was originally introduced by Decree-Law No. 117/83 of 25 February 1983. Currently, OCs are regulated by Decree-Law No. 408/91 of 17 October 1991, as amended by Decree-Law No. 343/98 of 6 November 1998 and by Decree-Law No. 181/2000 of 10 August 2000. | |
| FINLAND | The Securities Markets Act (495/1989) contains a broad definition of financial instruments. MTNs would, as a form of CP, seem to fall under the definition in Chapter 1, Section 2(3). | |
| SWEDEN | Negotiable debt instruments payable to the holder are issued under the Act (1936:82) on Debt Instruments. | |
| UNITED KINGDOM | | |
| USA | Other than the Securities Act, which governs how these instruments may be sold, there is no particular law governing MTNs. (The only caveat to that would be that US governmental agencies issue significant quantities of MTNs, the authority for which is contained in the legislation establishing the agency). | |

| 2 | Legal definitions | |
|-----------------|--|--|
| BELGIUM | There is no legal definition for MTNs in Belgium. They may be categorised as long-term CP. | |
| DENMARK | | |
| GERMANY | Debt security (section 793 seq. of the Civil Code); no specific definition in statute law. | |
| GREECE | The general definition of a debt instrument in bearer form applies: the person who signs a document fulfilling an obligation to the bearer, must satisfy the bearer, unless the bearer does not have the right to dispose of the title. Since the Corporations Act 2190/1920 allow the issuance of corporate bonds in general without any specification of duration, MTNs are understood to qualify as debt instruments or corporate bonds for purposes of Greek law, so laws on debt instruments or corporate bonds are applied to answer questions related to MTNs. | |
| SPAIN | MTNs as such are not recognised by Spanish legislation. MTNs may be categorised as long-term commercial paper, known as “bonos de empresa” or simply “bonos”. Article 282 of the Law of Public Limited Companies defines “bonos” as “titles that recognize or create a debt”. | |
| FRANCE | Article L. 213-1 of the French Financial and Monetary Code defines “Titres de Créances Négociables” (TCN) (see 1). MTN (“Bons à Moyen Terme Négociables”) are covered by this definition. There is no specific definition of MTN. | |
| IRELAND | The concept of a medium-term note is not, as such, known to Irish law. An MTN would therefore be classified in the same manner as a negotiable instrument that constitutes a debt security within the meaning of the Irish Regulations implementing the Listing Particulars and Prospectus Directives. An MTN would also fall within the definition of a debenture under section 2(1) of the Companies Act, 1963, which defines a debenture as including “debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not”. In terms of the maturity of a debt security, the Central Bank of Ireland’s Notice BSD CP 1/98 draws a distinction between “commercial paper”, which is defined as paper or other securities which have an original maturity of less than one year, and securities or other paper with an original maturity of one year or longer. A medium-term note would appear to fall into this more generic category of debt securities. | |
| ITALY | Italian law does not define an MTN. | |
| LUXEMBOURG | Luxembourg law does not define an MTN. | |
| THE NETHERLANDS | There is no legal definition for MTN in the Netherlands. They may be categorised as long-term CP. | |

| 2 | Legal definitions | |
|----------------|---|--|
| AUSTRIA | Under Austrian law an MTN is a security. There are no special legal definitions. More generally, bonds and other securities are mentioned in several Austrian laws (e.g. the Banking Act, the Securities Deposit Act, the Capital Market Act, the Stock Exchange Act, the Capital Transaction Tax Act). However, these acts do not contain express definitions. For the purposes of banking supervision the Banking Act contains a definition of money market papers in its liquidity provisions (section 25 (4) 3, last sentence). According to this provision, money market certificates are credit institution bonds that may only be traded between credit institutions which have committed themselves to selling such certificates only to credit institutions. | |
| PORTUGAL | Under Article 1 of Decree-Law No. 408/91, OCs are debt securities with a maturity of at least two years. | |
| FINLAND | No specific legal definition of “medium-term note” is laid down in the relevant provision of the Securities Markets Act (Chapter 1, Section 2 of the Act). In practice such papers are securities issued by Government, local governments, companies, banks and other financial institutions. | |
| SWEDEN | Debt instruments (MTNs or obligationer) which are tradable securities without maturity and denomination restrictions. | |
| UNITED KINGDOM | | |
| USA | There are no legal/statutory definitions. | |

| 3 | Issue |
|----------------|---|
| BELGIUM | The “quasi” medium-term notes that are issued with maturities exceeding one year are issued in a similar way as the short-term TBT except that their tenure exceeds one year and the raft of terms and conditions is wider. |
| DENMARK | |
| GERMANY | Issuers may be corporates, banks and public sector organisations. Issuing technique may be flexible. Maturity could be up to 30 years, but normally 1 - 5 years. |
| GREECE | In dematerialized form for issuers other than the Greek State according to Article 16 of a new Bill submitted to Parliament in 2001. Treasury Bills of the Ministry of Finance and National Economy are issued in dematerialized form according to Article 5 (1) and (2) of Law 2198/1994 in the BOGS, the system managed by the Bank of Greece. |
| SPAIN | <p>By definition, MTNs are issued by corporations, although there are no restrictions on credit institutions to issue “bonos” (debt securities issued by the Government are bonos del Estado, or more generally deuda pública, i.e. public debt).</p> <p>There is no minimum or maximum maturity limits, although titles issued with a maturity below 21 months would be generally considered as CP. Typically, MTNs (bonos) would have a maturity of more than 3 years. These are guidelines of the CNMV (soft law) and established market practice.</p> <p>Corporations may not issue MTNs (bonos) for a total value higher than their subscribed capital plus reserves (Law of Corporations, Article 282). The law establishes no other limits on the value of MTNs (bonos).</p> <p>The issue can be dematerialised, but must be certified by a public notary in a public document. The public document must be inscribed in the Registry before the placing of the titles. (Law of Corporations, Article 285).</p> <p>Notice of the issue must be published in the Official Bulletin of the Commercial Registry.</p> <p>The issue may include guarantees (mortgage credit, collateral in a credit institution, etc).</p> <p>The Law and Decree apply to securities issued in Spanish territory, meaning addressed to investors resident in Spain (Decree, Article 3).</p> |
| FRANCE | <p>Article L. 213-3 of the French Monetary and Financial enumerates the legal entities who may issue TCN, i.e. credit institutions, investment firms, Caisse des Dépôts et Consignations, companies making public offerings, economic interest groupings, Community institutions and international organisations of which France is a member. MTN can be issued by all these entities. Since the law "NRE" (New Economic Regulations) of 15 May 2001, local public authorities are also authorised to issue CP and MTNs.</p> <p>Dematerialisation has been compulsory since 1993. According to CRBF Regulation 98-08 of 7 December 1998 and the Ministerial Order of 31 December 1998, MTN must have a fixed maturity date, an initial maturity in excess of one year and a unit value equivalent to at least EUR 150,000.</p> |
| IRELAND | The primary issuer of debt securities in Ireland is the Irish Government. The National Treasury Management Agency (NTMA) manages the Irish national debt on behalf of the Irish Government, and in particular manages the issuance and redemption of Irish Government debt securities. Irish issuers of corporate bonds issue debt securities offshore in the international capital markets, including the UK and the US, and there is no purely domestic corporate bond market as such. |

| 3 | Issue |
|-----------------|--|
| ITALY | <p>According to the Delibera of CICR, 3 March 1994, non-bank entities can raise funds from the “public” only by issuing “cambiali finanziarie” and “certificati di investimento”.</p> <p>Banks can raise funds from the public with any kind of instrument. However, the atypical instruments should at least contain the information prescribed by the “Istruzioni di vigilanza” of Banca d'Italia (title V, chapter 3, sez. IV): name and address of the bank, the existing capital, nominal value of the instrument, ways of redemption, remuneration, guarantees.</p> <p>All debt instruments for public distribution are dematerialised.</p> |
| LUXEMBOURG | <p>In practice, MTNs have been issued under English, Luxembourg or German law as bearer securities.</p> |
| THE NETHERLANDS | <p>Issuance is generally regulated by the Act on the Supervision of Securities Trade 1995 (<i>Wte 1995</i>)</p> |
| AUSTRIA | <p>In practice, MTNs have been issued under English or German law as bearer securities. However, issuance under Austrian law is possible according to the principle of freedom of contract.</p> |
| PORTUGAL | <p>According to Article 2 of Decree-Law No. 408/91, only credit institutions with net assets of at least 2.5 million are entitled to issue OCs. The issuance and the public offer for subscription of OCs does not require any administrative authorisation and is not subject to commercial registration, as a result respectively of Article 4 and Article 5(3) of Decree-Law No. 408/91.</p> |
| FINLAND | <p>In practice the minimum issue is 100,000. Also by local authorities and banks. Dematerialised.</p> |
| SWEDEN | <p>All instruments are issued in book-entry form whereby the securities holdings are registered on an account with the Swedish Central Depository System (VPC). There are no restrictions, however, on issues in physical form. Minimum denominations are EUR 1,000 or SEK 10,000,000. There are no legal restrictions on denominations or maturity, or on which entities may issue, but the market requires at least a BBB-rating unless the issue is high yield and subordinated.</p> |
| UNITED KINGDOM | |
| USA | <p>There are no limits on the entities that may issue MTNs, and both financial and non-financial corporations issue such paper, although financial corporations are the largest issuers. There is no minimum or maximum maturity for MTNs, although, since it started as an alternative to the CP market, the maturity is typically greater than nine months. Despite the term “medium”, these notes have a maturity up to 30 years. In terms of size of issue, there is no required minimum. The size of an MTN issue will depend completely on the amount of funds the issuer needs to raise. The market is almost completely institutional.</p> |

| 4 | Rating | |
|-----------------|---|--|
| BELGIUM | Rating (not compulsory). | |
| DENMARK | | |
| GERMANY | Frequent. Normally, rated corporates would issue. Other issuer would use credit support techniques. | |
| GREECE | | |
| SPAIN | No provisions on rating | |
| FRANCE | Rating is not compulsory. This rating is obtained from a rating agency which is mentioned in the list established by the French Ministry of Economy and Finance. Rated issuers are exempted from applying to the COB for a visa (simplified information procedure). | |
| IRELAND | No relevant provisions. | |
| ITALY | In Italy rating is not compulsory for any issuance of securities. | |
| LUXEMBOURG | No provision on rating. | |
| THE NETHERLANDS | Rating (not compulsory). | |
| AUSTRIA | No provisions on rating. MTNs issued by Austrian banks under foreign law have been rated. | |
| PORTUGAL | No rating. | |
| FINLAND | Under Chapter 3, Section 11 of the Securities Markets Act, the Stock Exchange may list an instrument such as an MTN/CP that has been issued to the public, if the issuer is a member of the Stock Exchange and applies for such listing. | |

| 4 | Rating | |
|----------------|--|--|
| SWEDEN | No legal rating requirements but the market normally requires a BBB rating | |
| UNITED KINGDOM | | |

| | | |
|-----|---|--|
| USA | As a practical matter, although not "required", MTNs must be rated by one or more rating agencies so they can sell it. MTNs have the same ratings as any other bonds. | |
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| 5 | Investors and prospectuses | |
|---------|---|--|
| BELGIUM | See Annex II with respect to CP. | |
| DENMARK | | |
| GERMANY | A prospectus is required under section 7 of the Prospectus Act (Verkaufsprospektgesetz) of 1998. In practice, exemptions apply in case of restricted subscribers, minimum tradable lots beyond DEM 80,000 DM or maturities below one year. Prospectuses have to be deposited with the Federal Financial Supervisory Agency (BAFin). | |
| GREECE | <p>For corporate debt instruments (included possible MTNs), there is no obligation to publish a prospectus when issuing securities to the public if the issuer is a credit institution according to Article 6 (a) of Presidential Decree 52/1992, which applies to securities with a minimum maturity of 1 year not listed at the ASE. The decree does not apply on Treasury bills. There is a general obligation to publish a prospectus so that corporate debt instruments may be listed on the ASE (Articles 2, 3 and 4 of Presidential Decree 348/1985).</p> <p>Article 4 of Decree 350/1985 covers the listing of Treasury bills at the ASE. The law does not impose an obligation to publish a prospectus for the listing of government debt instruments under Article 2 (2) of Presidential Decree 348/1985. (Only obligations: The issuer publishes announcements regarding general assemblies of the bond holders and the payment of interest, and must appoint a financial institution as a place where the bond holders may exercise their rights).</p> | |
| SPAIN | <p>Under the Law, Article 26(d): before issue, a prospectus must be presented to and registered (with some exceptions) with the CNMV (Comisión Nacional del Mercado de Valores: Spanish securities supervision agency). The prospectus must contain enough information for investors to make a judgment on the proposed investment. It must state the conclusion of the mandatory audits as per Article 27 of the Law, the obligations derived from the securities, and the procedure for placing the security on the market. The prospectus must follow the models approved by the CNMV (see CNMV Circular 2/1999) and fulfil a series of minimum formal requirements. Correction of mistakes or relevant ex-post information must be included in a supplement. (Decree, Article 15-23)</p> <p>The public offer must take place within a month of registering of the prospectus with the CNMV (Decree, Article 25).</p> <p>In the case of international offers (i.e., including non-Spanish residents) the prospectus must include all information provided to foreign investors, even if not required by Spanish legislation. All information must be translated into Spanish (Decree, Article 26).</p> <p>In the case of issuers not resident in Spain, the required audit must comply with the legislation of the place of residence of the issuer. If this is outside the EU, the CNMV may require more clarification regarding the applicable norms</p> <p>The issue of MTNs (bonos) triggers the constitution of a "syndicate of holders" (sindicato de obligacionistas), comprising the holders of the titles, managed by a commissioner and acting in defense of the holders' interests.</p> | |
| FRANCE | No prospectus requirements. However, under Article L. 213-4 of the French Financial and Monetary Code, the issuers of TCN must fulfil certain information obligations concerning their economic and financial situation and their issuing programme. A decree specifies the content of these obligations and the conditions of publicity. The COB ensures these obligations are fulfilled (especially when issuers do not provide any rating; application for a visa for unrated programmes). The information document to be presented by issuers to the Banque de France is called "Dossier de présentation financière" (Information Memorandum). | |

| 5 | Investors and prospectuses |
|------------------------|--|
| IRELAND | The Irish Companies Act 1963 contains detailed provisions designed to ensure that the prospectus of a company offering debentures to the public for subscription contains adequate information about the company's business and is not misleading. Ireland has also implemented the Listing Particulars Directive (80/390/EEC) + (94/18EC), the Prospectus Directive (89/298EEC) and the Directive on admission of securities to official stock exchange listing (79/279/EEC) by means of the European Communities (Stock Exchange and Transferable Securities 1984 and 1992 (SI No. 282 of 1984, as amended by SI. No. 18 of 1991, SI No. 202 of 1992 and SI. No. 234 of 1994, and S.I. No. 202 of 1992). These Regulations contain requirements applicable to (a) debt securities admitted to official listing or subject to an application for admission to official listing on a stock exchange and (b) certain transferable debt securities which have a maturity of at least one year, are offered to the public for the first time, and are not already listed on a stock exchange. |
| ITALY | No prospectuses would be required (see CP). |
| LUXEMBOURG | A prospectus is only required if the instruments are offered to the public in Luxembourg or listed on the Luxembourg Stock Exchange. To the extent that the instruments are issued under a public programme, then an annual update of the prospectus is required. An update is also required if major events occur that could affect the issuer's creditworthiness. |
| THE NETHERLANDS | The Act on the Supervision of Securities Trade 1995 (and further rules and regulations) stipulates the requirements to the prospectus, which must be published unless securities are offered only to professionals, to a select group or only outside the Netherlands. |
| AUSTRIA | Article 2 of the Austrian Capital Market Act states that a prospectus is required when securities are offered to the public. No prospectus has to be drawn up, when securities are only offered to limited number of professional investors or in the case of continuous issues by credit institutions. |
| PORTUGAL | Under Article 5(1) of Decree-Law No. 408/91, a prospectus must be published before the placement of OCs starts. The prospectus must contain information about the main features, as listed in the relevant legal provision, regarding the issuance and the public offer for subscription of OCs. According to Article 5(2) of Decree-Law No. 408/91, the prospectus must be sent to the Banco de Portugal before the placement of OCs begins |
| FINLAND | All issuers of financial instruments, other than shares in companies, which fall within the scope of the Securities Markets Act, are subject to the information requirements in Chapter 2, Section 2 of the Act. Under this provision, anyone who issues securities (e.g. CP or MTN) to the public must provide sufficient information on any circumstances that may substantially affect the value of the securities in question. |
| SWEDEN | Swedish law does not distinguish between retail and professional investors as such for selling-restriction purposes. It states that debt instruments may only be offered to a non-closed group (Sw öppen krets) if a prospectus fulfilling Swedish requirements has been published. This does not apply if the minimum amount to be paid is at least SEK 300,000. However, if the issue is registered on an exchange a prospectus must be established fulfilling the requirements of the Swedish Financial Supervisory Authority (FFFS 1995:21). The prospectus must be approved by the Stockholm Stock Exchange. |

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|-----------------------|-----------------------------------|--|
| 5 | Investors and prospectuses | |
| UNITED KINGDOM | | |

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|------------|---|--|
| USA | <p>Investor protection for these instruments is governed by the 1933 Act. Most MTNs are registered offerings under a shelf registration statement and thus have a full prospectus available. A corporation could, however, issue MTNs in a private placement (typically 144A) and thus avoid registration and prospectus requirements (although an offering document would still be prepared). Governmental agency MTNs are offered under term sheets and offering documents.</p> | |
|------------|---|--|

| 6 | Trading | |
|------------|---|--|
| BELGIUM | See Annex II with respect to CP. | |
| DENMARK | | |
| GERMANY | OTC market, stock exchange admission is possible. | |
| GREECE | <p>Listed corporate bonds are traded on the Market for Fixed Income Securities (AASE) at the ASE (Article 53(2) and (3) of Law 2533/1997). Non-listed corporate bonds are traded in the OTC market.</p> <p>Listed government bills and bonds are traded at the Market for Fixed Income Securities (AASE) at the ASE (Article 53 (1) of Law 2533/1997).</p> <p>As regards the secondary market system between primary dealers, dematerialized treasury bills are traded at HDAT, operated by the Bank of Greece (Article 26 of Law 2515/1997, as amended by Law 2733/1999). Treasury bills may be traded on OTC.</p> | |
| SPAIN | <p>The admission of securities to trading in official markets requires prior verification (but no authorization) by the CNMV (Law, Article. 32.1) and the agreement of the authority of the secondary market concerned.</p> <p>MTNs (bonos) are traded in the stock exchange and mostly in the official secondary market AIAF (Asociación de Intermediarios de Activos Financieros). The AIAF is a price market (i.e. not blind) for fixed-return titles without public participation.</p> <p>If traded outside an official secondary market, the transaction requires intervention by public notary, or a certified securities agent (sociedad o agencia de valores).</p> <p>Buy-back is possible (1) if permitted in a public document recording the issue; (2) in agreement with the syndicate of holders; or (3) by purchase in the stock exchange.</p> | |
| FRANCE | <p>TCN can be traded on a regulated or over-the-counter market (Article L213-1 of the Financial and Monetary Code). Disposal and trading are open to any authorised credit institution, investment firm or the Caisse des Dépôts et Consignations.</p> <p>Buy-back is possible and must be reported to the Banque de France.</p> | |
| IRELAND | <p>The Irish Government bond market is the primary domestic market for debt securities in Ireland. Irish Government bonds are quoted on the Irish Stock Exchange. In contrast to the market for government bonds, Irish issuers of corporate bonds primarily issue debt securities offshore in the international capital markets, including the UK and the US, and there is no purely domestic corporate bond market as such.</p> | |
| ITALY | Not compulsory in regulated markets. | |
| LUXEMBOURG | | |

| 6 | Trading | |
|-----------------|--|--|
| THE NETHERLANDS | | |
| AUSTRIA | OTC. In principle, MTNs can be admitted to trading at the Stock Exchange provided the requirements set out in the Stock Exchange Act are met. | |
| PORTUGAL | Under Article 10 of Decree-Law No. 408/91, OCs can be traded on a regulated market, as foreseen by Articles 199 and 200 of the Securities Code. The possibility of buy-back is established in Article 7 of Decree-Law No. 408/91. Under this Article, the issuing credit institutions can only buy-back after 12 months from the date of the issue. | |
| FINLAND | Buy-back by the issuer is possible but unusual, in practice though, but not because of Finnish law. | |
| SWEDEN | There are no legal requirements on listing but issues are often registered on the Stockholm Stock Exchange so as to offer quotations to investors and thus enable a liquid market. Dealers do not undertake to maintain a secondary market. There are no selling restrictions but the prospectus contains a remainder on foreign selling restrictions. | |
| UNITED KINGDOM | | |
| USA | As a part of the overall bond market, there is an active secondary market for MTNs and they trade in the same way as all other general corporate bonds. | |

| 7 | Nature of rights | |
|-----------------|---|--|
| BELGIUM | See Annex II with respect to CP. | |
| DENMARK | | |
| GERMANY | Normally, MTNs are issued as securitised debt instruments (Schuldverschreibung, sections 793 seq. Civil Code), and so the general securities and safe custody laws apply. | |
| GREECE | Rights conferred on bearers of MTNs constitute an <i>obligatio</i> , not a right <i>in re</i> according to AK 888. The registration of dematerialized corporate MTNs into an account constitutes holder's rights (2533/1997 and 2651/1998) as amended by the new draft Bill of 2001. All government bills are dematerialised. | |
| SPAIN | Proprietary rights of dematerialised titles are established by being written in the relevant registry (Law, Article 8). For securities not admitted to negotiation in official secondary markets, the issuer chooses the registry from among those authorised for this activity (i.e. credit institutions). For securities admitted to negotiation in secondary markets, the registry is that of the relevant market, in this case the registry within any of the stock exchanges or the AIAF. Registered securities are fungible. The transfer of rights takes place by account transfer, where the written record of the transfer has the same effects as a transfer of title, and comes into force with respect to third parties from the moment of the inscription. A third party acquiring the title from the person identified by the registry as able to transfer the title cannot be successfully challenged (Law, Article 9). The system of representing securities in accounts is further regulated by Royal Decree 116/1992, of 14 February. | |
| FRANCE | According to the nature of the issuer, MTN can be guaranteed according to the rules respectively applicable to CD and CP. | |
| IRELAND | Taking a debt security to be a negotiable instrument, proprietary rights attach to the holder of such an instrument. | |
| ITALY | See CP. | |
| LUXEMBOURG | The holder of the instrument has a contractual claim against the issuer of the instrument and a right <i>in rem</i> against the depository of such instruments. Article 6 of the Law of 1 August 2001 defines the proprietary rights accorded to the investor as "real and incorporeal rights" over the pool of assets. | |
| THE NETHERLANDS | There are no specific rules or regulations in this regard. General Dutch civil/commercial law applies. | |

| 7 | Nature of rights | |
|----------------|--|--|
| AUSTRIA | General civil law rules apply. | |
| PORTUGAL | According to Article 6(2) of Decree-Law No. 408/91, OCs can be dematerialised. Registration of OCs into an account constitutes the holder's rights. Under Article 6(3) of Decree-Law No. 408/91, the transfer of rights associated with OCs only takes effect from the issuing credit institution's point of view when notified by the transferee. | |
| FINLAND | The CP holder's right arises from Section 1 of the Law on Promissory Notes (622/1947), which explicitly states the obligation to repay debts under promissory notes. | |
| SWEDEN | Each investor's holdings of securities is registered on an account with the book-entry system (VPC). The person registered as a holder on the fifth day before taking any payment under the security is considered the holder. | |
| UNITED KINGDOM | | |
| USA | There are no specific rules regarding the holder's rights. The instruments are the issuer's general unsecured obligations (although MTNs may be secured in some circumstances or otherwise have some backing). Under general commercial law, the registered holder can transfer its rights unless prohibited by the instrument (and subject to the securities laws). | |

| 8 | Procedures for clearing and settlement | |
|----------------|---|--|
| BELGIUM | See Annex II with respect to CP. | |
| DENMARK | | |
| GERMANY | Usually, the settlement takes place through Clearstream Frankfurt or its affiliates. Normally, CPs are held in immobilisation with a global note. | |
| GREECE | <p>The Dematerialized Securities System (DSS) is managed by the Central Securities Depository (CSD or KAA in Greek) for private dematerialized MTNs listed at the ASE (Article 16 of new bill amending Article 58 (2) and (3) of 2533/1997). Non-listed private debt instruments may also be cleared and settled through the CSD under the new Article 58 (3) of Law 2533/1997 as amended by the new draft bill.</p> <p>Treasury bills listed at the AASA of ASE are settled at the CSD (KAA) for members of the ASE; followed by settlement at accounts of the participants to the BOGS under Article 58 (1) Law 2533/1997.</p> <p>Treasury bills in general are cleared and settled through the BOGS, managed by the Bank of Greece in accordance with Article 6 of Law 2198/1994 and 53 (2) of Law 2533/1997.</p> <p>Time for settlement: T+3 for titles in paper form according to Article 58 (3) of Law 2533/1997.</p> | |
| SPAIN | <p>If traded in an official secondary market, MTNs (bonos) must be registered with the SCLV with the exception of singular titles. The SCLV has exclusive rights for the registry, clearing and settlement of securities traded in the stock exchanges and other official secondary markets.</p> <p>The regulation of clearing and settlement of securities in Spain will be subject to substantial regulatory changes before the end of this year.</p> | |

| 8 | Procedures for clearing and settlement |
|-----------------|---|
| FRANCE | Compulsory domiciliation through a credit institution or an investment firm established in France, Caisse des Dépôts or a French branch of an EU credit institution or an investment firm authorised to keep cash accounts in France. See Articles 6.3.10 to 6.3.12, Title 6, “Custody and account-keeping of financial instruments” of the General Regulations of the Conseil des Marchés Financiers. Before any issue of TCN, the issuer must make a written agreement with a domiciling institution responsible for ensuring the regularity of the conditions of issue. Authorised domiciling institutions are those indicated in the ministerial order implementing the above Decree and the CRBF Regulations, i.e. credit institutions, investment firms and the Caisse des Dépôts. The domiciling institution is responsible, among other things, for ensuring that the amount of the issue corresponds exactly to the instructions received from the issuer and must report the characteristics of the issue to the issuer in the manner specified by the above agreement. The domiciling institution acts as transfer and paying agent for the issue and must fulfil the requirements for statistical reporting to the Banque de France set out in the above ministerial order and the CRBF Regulations. If an issuer decides to have the account of an issue of TCN held at a central depository, the issuer must inform the central depository which domiciling institution it has appointed to transmit its instructions. The central depository must open a separate account for each issue. The central depository is be responsible for ensuring that the number of securities issued is equal to the number of securities recorded on its books in the names of the custody account-keepers. If an issuer decides not to have the account of an issue of TCN held at a central depository, its domiciling institution is responsible for ensuring that the number of securities issued is equal to the number of securities recorded on its books in the names of the other custody account-keepers. |
| IRELAND | Debt securities issued by the Irish Government are issued through a register maintained by the Central Bank of Ireland, acting as fiscal agent for the Irish Government. Most of Irish Government bonds are cleared and settled offshore, through the Euroclear System. Irish issuers of corporate bonds primarily issue debt securities offshore in the international capital markets, including the UK and the US, and these bonds are cleared and settled through clearing and settlement systems located outside Ireland. |
| ITALY | According to CONSOB Resolution n. 12479 and the Decree of the Ministry of Treasury of 23 August 2000, all securities normally traded on the money market are eligible for deposit at Monte Titoli and can be transferred through it. |
| LUXEMBOURG | There are no specific rules or regulations. |
| THE NETHERLANDS | There are no specific rules or regulations. |
| AUSTRIA | Settlement through the national CSD as well as an international CSD is possible. |
| PORTUGAL | The are no specific rules or regulations. |
| FINLAND | Domestic settlement through the Central Securities Depository (APK). The parties are both bound by the Rules of the APK. |

| | | |
|-----------------------|---|--|
| 8 | Procedures for clearing and settlement | |
| SWEDEN | VPC is the only clearing system in Sweden and its general rules apply to all issued securities. | |
| UNITED KINGDOM | | |
| USA | MTNs are cleared and settled like all other corporate bonds (with Governmental MTNs cleared through accounts with a Federal Reserve Bank acting as agent for the agency). | |

| 9 | Taxation and stamp duty | |
|-----------------|--|--|
| BELGIUM | See Annex II with respect to CP. | |
| DENMARK | | |
| GERMANY | No stamp duty. The capital gains tax (Kapitalertragssteuer) is levied (usually 30%) by banks that having safe custody accounts for investors. | |
| GREECE | Under Article 11 (3) of Law 2198/1994, taxes and stamp duties are not imposed on government bonds and treasury bills, on the payment at the end of their maturity, on capital gains accumulated, on transfers of title and on pledges created on such government papers. According to Article 12 (8) of Law 2238/1994, the taxation treatment of Treasury bills and of corporate bonds pursuant to Article 26 (8) of Law 2789/2000 is the same. 10% withholding tax is imposed on the interest gained in Greece. There is no capital gains taxation in Greece. | |
| SPAIN | Final taxation could depend on whether the income (from the coupon or at the maturity) is generated over two years or not; withholding tax and formal duties are generally applied as regulated in Law 40/1998 (Individuals Income Tax”), Law 43/1995 (“Corporate Income Tax”) and Law 41/1998 (“Non Residents Income Tax”)." | |
| FRANCE | Withholding tax: under Article 125III of the French General Tax Code, interest paid by a French borrower to a non-resident is subject to a 15% French withholding tax. An exemption to this withholding tax, however, generally applies to interest paid on TCNs governed by French law. | |
| IRELAND | No available information to date. | |
| ITALY | No specific rules for MTNs. | |
| LUXEMBOURG | No specific rules for MTNs. | |
| THE NETHERLANDS | No stamp duty. As regards income tax: proceeds cumulate with normal revenues of the company; no withholding tax is applied. | |
| AUSTRIA | There is no securities transaction tax. Austrian residents are subject to a withholding tax on interests. | |
| PORTUGAL | Under Article 71(3)(b) of the IRS Code (Individuals Taxation Code) and Articles 80 (2)(c) and 88 (11)(c) of the IRC Code (Companies Taxation Code), the interests paid are taxed at the rate of 20% (tax deduction at source), but exempted from stamp tax - capital gains resulting from the transfer of MTNs are subject to corporate income tax. | |

| | | |
|-----------------------|--|--|
| 9 | Taxation and stamp duty | |
| FINLAND | | |
| SWEDEN | There is no withholding tax on interest payments in Sweden. There are no other tax considerations provided that the investor has no connections with Sweden other than the mere holding of the security. | |
| UNITED KINGDOM | | |
| USA | Other than income taxes on the interest or imputed interest and capital gains taxes on sales, there are no taxes inherent with these instruments. Withholding taxes would presumably apply for interest payments on MTNs sold to non-US entities that are not exempt from withholding. | |

| 10 | Supervisory and regulatory aspects | |
|------------|---|--|
| BELGIUM | See Annex II with respect to CP. | |
| DENMARK | | |
| GERMANY | The Federal Financial Supervisory Agency (BAFin) is entrusted with ensuring the proper functioning of the financial markets. The solvency of financial intermediaries issuing or purchasing CDs is subject to supervision also by the BAFin. | |
| GREECE | Capital Markets Commission for private dematerialized instruments settled through the CSD (KAA) under Article 16 (1) [prospective Article 58 (2) of Law 2533/1987] of new draft Bill. Bank of Greece for the BOGS under Article 9 of Law 2198/1994, in connection with Articles 2 (e) and 55 (5) of the Statute of the Bank of Greece. The latter legal basis applies as well as for the supervision of the secondary market between primary dealers, HDAT. | |
| SPAIN | CNMV, the Spanish securities supervision agency is in charge of supervision of the issue and trading of MTNs (bonos), as with other securities. There are no specific supervisory provisions applicable to MTNs (bonos). The CNMV may suspend issue or trading of any securities under its supervision. Generally, no prior authorisation is required for issue (other than prior verification by the CNMV), except for securities with interest linked to price indexes (Ministerial Order of 28 May 1999). Nevertheless, the issue must be communicated to the CNMV, together with the submission and registration of documents on the characteristics of the emission, the issuer's audit reports and annual accounts, and the prospectus. The requirements to register audit reports, annual accounts and the prospectus do not apply to issues addressed to public institutions, to less than 50 investors, to the staff of the institution, or to those whose total value is less than EUR 6,010,121, or to issues of securities with a unit value of less than EUR 150,235. | |
| FRANCE | Banque de France is responsible for the surveillance of the MTN market. Banque de France ensures the smooth functioning of the market. It may suspend or prohibit the issuance in case the applicable rules are infringed. | |
| IRELAND | The National Treasury Management Agency (NTMA) is responsible for managing the Irish Government's debt issues, and in particular, following consultation of the Central Bank of Ireland, for the recognition of primary dealers required to act as market-makers in Irish Government bonds. The Stock Exchange Act 1995 confers statutory authority on the Central Bank of Ireland to administer the system of regulation and supervision of approved stock exchanges and their member firms. The Irish Stock Exchange is the competent authority in Ireland for purposes of the scrutiny/approval of public offer prospectuses under the Irish Regulations implementing the Prospectus Directive. | |
| ITALY | The issuance of securities with non-standard characteristics must first be notified to Banca d'Italia following the procedure laid down by Article 129 of the Consolidated Banking law. | |
| LUXEMBOURG | | |

| 10 | Supervisory and regulatory aspects | |
|-----------------|---|--|
| THE NETHERLANDS | The Securities Commission is in charge of supervision as stated in the Act on the Supervision of the Securities Trade 1995. | |
| AUSTRIA | The Austrian Securities Authority is responsible for investigations and the oversight of market participants' activities (credit institutions, issuers, investment services providers, securities exchange). | |
| PORTUGAL | Since the issuers can only be credit institutions, the issuance of OCs is always subject to the supervisory and regulatory authority of the Banco de Portugal. Where OCs are traded on a regulated market, supervisory and regulatory powers are also exercised by the <i>Comissão de Mercado de Valores Mobiliários</i> . | |
| FINLAND | The Finnish Financial Supervision Authority (FSA) operates in connection with the Bank of Finland but is a functionally independent body. It supervises the financial markets and their participants. The Capital Markets Department of the FSA, in particular, monitors securities markets practices and issuers' compliance with disclosure requirements. | |
| SWEDEN | No central bank consent is required on establishing the programme or in connection with each issue. The Financial Supervisory Authority is responsible for licensing and supervising credit institutions. | |
| UNITED KINGDOM | | |
| USA | Certain types of issuers of CP or MTNs might be subject to other regulatory authorities that govern the issuer (such as insurance regulation), but generally issuance and trading of MTNs are only subject to securities regulations described above. | |

ANNEX IV

to the EFMLG report on legal aspects of short-term securities

CERTAIN REGULATORY ASPECTS OF COMMERCIAL PAPER

2 September 2002

ANNEX IV

Certain Regulatory Aspects of Commercial Paper

| 1 | Capital adequacy |
|-----------------|--|
| BELGIUM | CP/CD are usually booked in an investment portfolio (though this brings no benefit compared to unsecured lending). Booking in a trading portfolio is only accepted if it follows an approved internal VAR-model. |
| DENMARK | No domestic CP/CD market. |
| GERMANY | CP can be booked in a trading portfolio (in which case reduced risk weighting applies) if there is a liquid secondary market and the CP is listed at an authorized exchange. Most CP is not listed due to the high cost, so it is usually booked in an investment portfolio which means there is no benefit in holding an inventory of CP compared to unsecured lending. |
| GREECE | No domestic CP/CD market. |
| SPAIN | CP is usually booked in an investment portfolio due to the liquidity rule and very few issues can comply with; this means there is no benefit in holding an inventory of CP compared to unsecured lending. |
| FRANCE | CP is usually booked in a trading portfolio. Money Market Funds keep the market liquid and the turnover of inventories is high. The benefit of booking CP in a trading portfolio is that they are weighted respectively at 3.125% under 6 months and 12.5% above 6 months if they are rated A2/P2 or better (Règlement n. 99-01 – 21 June 1999). If they are booked in an investment portfolio, CPs are weighted 100% and CDs 20%. |
| IRELAND | Rated corporate issues are only weighted 20% if booked in a trading portfolio. This supports the development of the market. |
| ITALY | No differentiation between trading and investment portfolio. CP is weighted only by 20% if backed by a bank guarantee. |
| LUXEMBOURG | CP are weighted depending on the nature of the issuer (20% for an OECD bank or 100% for other unguaranteed issue). There is no capital gain from having a CP instead of an unsecured lending. |
| THE NETHERLANDS | There is a difference between the trading and investment portfolios in the way capital is used. However, most banks need to book their inventories in the investment portfolio, and this partly restricts the trading activities and development of the market. |

| 1 | Capital adequacy |
|----------------|---|
| AUSTRIA | There is a difference between trading and investment portfolios in the way capital is used, but this does not restrict the trading activities or development of the market. |
| PORTUGAL | There is a difference between trading and investment portfolios in the way capital is used, but this is not restrict the trading activities or development of the market. |
| FINLAND | There is no difference between trading and investment portfolios in the way capital is used, but this does not restrict the development of the market. |
| SWEDEN | Reduced risk weighting applies if the CP is listed on an authorised exchange, rated at no less than investment grade, and held in a trading portfolio. The reduced risk weighting is 3.125%, 12.5% or 20% depending on the tenure. Most corporate CP is not listed due to the high cost. |
| UNITED KINGDOM | There is a capital benefit in booking both CPs and CDs in trading books rather than investment/accrual books. CP is 100% weighted on accrual books whereas on a trading book it is 3.125% for 0-6 months, 12.5% for 6-24 months and 20% for over 2years. For CDs the weighting is the same as for CPs on a trading book and 20% weighted on an accrual book if issued by a Zone A bank. |

| 2 | Liquidity ratios | |
|------------------------|--|--|
| BELGIUM | No benefit of CP versus unsecured lending to corporates. | |
| DENMARK | No domestic CP/CD market. | |
| GERMANY | No benefit of CP versus unsecured lending to corporates. | |
| GREECE | No domestic CP/CD market. | |
| SPAIN | No benefit of CP versus unsecured lending to corporates. | |
| FRANCE | The regulatory liquidity ratio is monitored by the French banking supervisory authority (Commission Bancaire). CP/CDs holdings have no advantage over interbank or corporate unsecured lending under 1 month maturity (both are weighted at 100% within liquid assets). However, holdings of CDs with a maturity between 1 and 6 months are weighted at 40% within liquid assets. This weighting becomes 25% above 6 months. | |
| IRELAND | CP has an advantage over unsecured lending to corporates if the paper is listed. | |
| ITALY | CP has no advantage over unsecured lending to corporates. | |
| LUXEMBOURG | Holding CP has no advantage compared to unsecured lending. | |
| THE NETHERLANDS | It is beneficial to hold CP rather than make unsecured loans to corporates (calculation of only 70% of the notional amount). | |
| AUSTRIA | CP has no advantage compared to unsecured lending. | |
| PORTUGAL | Holdings of CP are calculated with only 80% of their notional amount for the liquidity ratios compared to 100% for unsecured lending. | |

| | | |
|-----------------------|--|--|
| 2 | Liquidity ratios | |
| FINLAND | The treatment of papers and short-term papers in cash reserve calculations is different – deposits can be deducted by 100% but for CD the treatment is less favorable. | |
| SWEDEN | Holding CP has no advantage compared to unsecured lending. | |
| UNITED KINGDOM | The FSA allows UK banks to offset up to 50% of their wholesale 5 working day GBP outflow with CDs maturing in >5days. CP is not allowable as a liquid asset and therefore has no liquidity benefits for the FSA. | |

| 3 | ECB eligibility with regard to commercial paper ¹ | |
|------------|--|-----------------------|
| | TIER ONE ² | TIER TWO ³ |
| BELGIUM | No | No |
| DENMARK | No | No |
| GERMANY | No | Yes |
| GREECE | No | No |
| SPAIN | No | No |
| FRANCE | No | Yes |
| IRELAND | No | No |
| ITALY | No | No |
| LUXEMBOURG | Yes | No |

¹ Criteria underlying the compilation of Table 3 – ECB eligibility

A **No** in the table means that, at the current stage, CP which is listed (or traded OTC) in a given country is not included in the list of eligible assets. In particular, a No in the Tier One column means that one or more of the eligibility criteria for the Tier One assets are not fulfilled and thus CP cannot be eligible. A No in the Tier Two column, instead, means that either one or more of the minimum eligibility criteria for tier two assets are not fulfilled or that CP is not of particular importance to a given national financial market and banking system and so the relevant national central bank has decided not to include CP in its tier two list.

A **Yes** in the table does not mean that all CPs listed (or traded OTC) in a given country is eligible. Actually, in several cases the amount of eligible CPs is rather small. However, also in these cases, the table reports a Yes.

Financial instruments with CP-like characteristics issued by public institutions have not been taken into consideration.

Of course, in countries where no CP-like instruments exist, a No was also awarded in the table.

| 3 | ECB eligibility with regard to commercial paper ¹ | |
|-----------------|--|----|
| THE NETHERLANDS | Yes | No |
| AUSTRIA | No | No |
| PORTUGAL | No | No |
| FINLAND | No | No |
| SWEDEN | No | No |
| UNITED KINGDOM | No | No |
| UNITED STATES | No | No |

² Chapter 6 of “The single monetary policy in the euro area: General documentation on Eurosystem monetary policy instruments and procedures”, April 2002, addresses the issues related to the eligibility of assets for the Eurosystem monetary policy operations. What follows is an abstract of paragraphs 6.1, 6.2 and 6.3. The provisions reported below will be enforced from 7 July 2002

Tier One consists of marketable debt instruments fulfilling uniform euro area-wide eligibility criteria specified by the ECB.

The ECB establishes and maintains a list of tier one assets. This list is available to the public. Debt certificates issued by the ECB are listed as Tier One assets. Debt certificates issued by the national central banks before the adoption of the euro in their respective Member State are also included in the Tier One list. The following eligibility criteria are applied to other tier one assets:

- They must be debt instruments having: (a) a predefined principal amount; and (b) a coupon that cannot result in a negative cash flow. In addition, the coupon should be one of the following: (i) a zero coupon; (ii) a fixed rate coupon; or (iii) a floating rate coupon linked to an interest rate reference. The coupon may be linked to a change in the rating of the issuer itself. Furthermore, inflation-indexed bonds are eligible. These features must be maintained until the obligation is redeemed.
- They must meet high credit standards. In the assessment of the credit standard of debt instruments, the ECB takes into account, among other things, of available ratings by market agencies, guarantees provided by financially sound guarantors, and certain institutional criteria which would ensure particularly high protection of the instrument holders.
- They must be transferable in book-entry form.

- They must be deposited/registered (issued) in the EEA with a central bank or with a central securities depository (CSD) which fulfils the minimum standards established by the ECB. They must be held (settled) in the euro area through an account with the Eurosystem or with an SSS which fulfils the standards established by the ECB (so that perfection and realisation are subject to the law of a euro area country). If the CSD where the asset is issued and the SSS where it is held are not identical, then the two institutions have to be connected by a link approved by the ECB.
- They must be denominated in euro.
- They must be issued (or, alternatively, guaranteed) by entities established in the EEA.
- They must be listed or quoted on a regulated market as defined in the Investment Services Directive, or listed, quoted or traded on certain non-regulated markets as specified by the ECB. Furthermore, market liquidity may be taken into account by the ECB when determining the eligibility of individual debt instruments.

³ **Tier Two** consists of additional assets, marketable and non-marketable, which are of particular importance to national financial markets and banking systems and for which eligibility criteria are established by the national central banks, subject to the ECB's minimum eligibility criteria. The specific eligibility criteria for Tier Two applied by the respective national central banks are subject to ECB approval. The national central banks establish and maintain national lists of eligible Tier Two assets. These lists are available to the public. Tier Two assets have to fulfil the following minimum eligibility criteria:

- They can be debt instruments (marketable or non-marketable) having: (a) a predefined principal amount; and (b) a coupon that cannot result in a negative cash flow. In addition, the coupon should be one of the following: (i) a zero coupon; (ii) a fixed rate coupon; or (iii) a floating rate coupon linked to an interest rate reference. The coupon may be linked to a change in the rating of the issuer itself. Furthermore, inflation-indexed bonds are eligible. These features must be maintained until the obligation is redeemed. They can also be equities (traded on a regulated market as defined in the Investment Services Directive). Equities issued by credit institutions and debt instruments issued by credit institutions which do not comply strictly with the criteria set out in Article 22 (4) of the UCITS Directive are normally not eligible for inclusion in the Tier Two lists. However, the ECB may authorise national central banks to include such assets in their Tier Two lists subject to certain conditions and restrictions.
- They must be debt obligations against or equities of (or be guaranteed by) entities which are judged financially sound by the national central bank which has included the assets in its Tier Two list.
- They must be easily accessible to the national central bank which has included the assets in its Tier Two list.
- They must be located in the euro area (so that perfection and realisation are subject to the law of a euro area country).
- They must be denominated in euro.
- They must be issued (or, alternatively, guaranteed) by entities established in the euro area.

ANNEX V
to the EFMLG report on legal aspects of short-term securities

THE EVOLUTION OF FUND RAISING – THE ITALIAN CASE

2 September 2002

THE EVOLUTION OF FUND RAISING – THE ITALIAN CASE

In the Italian banking system, legal obstacles to the integration of short-term securities markets were represented in the past by typical formal requirements for the issuance of short-term and medium to long-term security instruments. These requirements applied to both the instruments themselves and to the entities authorised to issue them.

For a long time, the Italian law and regulatory regime for banking activities had been structured on the principles set out by R.D.L. 12/3/36 n. 375 converted in the law 7/3/38 n. 14. This regime provided and defined the allowed activities for each different type of banks, the so-called principle of “specialisation”. As such, the activities and businesses were differentiated on the basis of their type and duration, and only certain kinds of banks were allowed to carry out certain business of particular durations. The basic distinction was between ‘Istituti a Medio Lungo Termine’, and ‘Banche Commerciali’, the latter type specialising in the short-term and commercial activities.

Only when the law referred to as d.lgs. 481/92 came into effect was the European model of the universal bank introduced in Italian jurisdiction. At this point, the principle that only certain kinds of banks (for example, Istituti a Medio e Lungo Termine) could issue certain types of security ceased to exist.

The distinction between medium to long-term banks and commercial banks originated in the CICR resolution of 28 January 1963, which defined “Raccolta a Medio Termine” (“Medium-term Collecting”), as collecting funds with a duration of at least 18 months and not more than 60. Such distinctions have been maintained in banking practice, and are still to be considered as “short-term collection”, the collection of funds with a duration of up to 18 months; “Medium-term collection”, the collection defined above; and “long-term collection”, for funds with a duration of more than 60 months.

Also, the typical collecting instruments for the Istituti di Credito a Medio Lungo Termine - during the old regime – were the “Obbligazioni”, which represented a form of medium-term collection, characterised as a “mutuo” (“loan” of the investor as a creditor of the bank) under Italian civil law.¹

In contrast to the Istituti a Medio e Lungo Termine, the typical collecting instruments of the Banche Commerciali - besides the current accounts and savings deposits – were the “Certificati di Deposito”, which were issued on a short-term and individual basis. Judging from the rules and the principles of the Italian Civil Code, Certificati di Deposito were an instrument representing a deposit.

In particular, such a deposit is characterised as “deposito irregolare” as set out by Article 1782 of Codice Civile, which states that if a deposit refers to a certain amount of money or other fungible things, then provided under the contract that the depository has the right of disposal over such money

¹ Article 1813 of Codice Civile (“cod. civ.”) states that the “mutuo” is the contract by means of which a party delivers to the other party a certain amount of money or other fungible things, and the other party undertakes to return as many of the same species and type.

or things, of title over such money or things is transferred in favour of the depository. The depository becomes the owner and is committed, at the convened maturity, to return the same amount of money or fungible things, of the same species and type.

By comparing the two instruments described above, we can see how similar the two contractual schemes are. In fact, before the universal bank was introduced in Italian jurisdiction the distinguishing features of such instruments were much more evident. These features were: (i) the different entities allowed to issue each type of collecting instrument; (ii) the typical duration for each instrument; and (iii) the duty imposed on the banks, to set minimum reserves for each kind of collecting instrument.

However, since the introduction universal bank to Italian jurisdiction, (a) the principle that only a certain type of bank can issue a certain kind of collecting instrument is no longer valid; (b) Certificati di Deposito may now be issued even for the medium term; (c) the required minimum reserve has been reduced and it is no longer meaningful, to distinguish between the two instruments.

On the latter point, before the start of the third stage of Economic and Monetary Union, Italian banking law – characterised by the principle of specialisation – stated that the competent authorities could impose minimum reserves on the bank both to protect the banks' customers (by setting certain minimum reserves, with certain characteristics, for each type of instrument of deposit), and to regard to the scope of monetary policy.

Over time, however, minimum reserves became more and more exclusively a means to manage the monetary policy. Consequently, the Italian distinctions lost their meaning, including the arguments put forward that the different minimum reserves for different kinds of collecting instruments could be used to distinguish between Obbligazioni and Certificati di Deposito.

Therefore, in the Italian jurisdiction, it is no longer meaningful to differentiate, between medium-term notes (Obbligazioni) and Certificati di Deposito, because both collecting instruments essentially constitute a credit of the investor against the bank. In fact, this credit is created by subscribing the collecting instrument (Obbligazione or Certificato di Deposito) and by delivering at the same time - with transfer of ownership – a certain amount of money or of fungible things, which the banks has to return at the maturity date of the instruments.

ANNEX VI
to the EFMLG report on legal aspects of short-term securities

FRENCH CP ISSUERS AND EURO-CP ISSUERS

2 September 2002

Main French CP issuers (in million euro)

| Issuers | 31 May 2002 |
|--------------------------------------|-------------|
| GENERAL ELECTRIC CAPITAL CORPORATION | 11,148 |
| MORGAN STANLEY DEAN WITTER | 5,213 |
| ANTALIS S.A. | 3,923 |
| CARREFOUR | 3,114 |
| VOLKSWAGEN COORDINATION CENTER | 2,201 |
| VIVENDI ENVIRONNEMENT | 2,179 |
| FRANCE TELECOM | 2,101 |
| AVENTIS | 2,085 |
| L.V.M.H. | 2,042 |
| INDIGO FUNDING LIMITED (TITRIWATT) | 2,013 |
| LAFARGE S.A. | 1,768 |
| S.N.C.F. | 1,692 |
| PPR FINANCE | 1,618 |
| SUEZ LYONNAISE DES EAUX FINANCE | 1,479 |
| AXA | 1,415 |
| LMA S.A. | 1,318 |
| PEUGEOT (SOFIRA-GIE) | 1,291 |
| THESEE LTD | 1,171 |
| USINOR ET CIE SNC | 1,077 |
| TOTALFINAELF CAPITAL | 1,000 |

Top Euro Commercial Paper Issuers

| Rank | ECP Issuer Name | Outstandings USD Mln | Fitch Rating (ST) ¹ | Fitch Rating (LT) |
|------|--|-------------------------|-----------------------------------|----------------------|
| 1 | DEPFA BANK EUROPE/DEUTSCHE (ECD/ECP) | 7,177 | F1+ | AA- |
| 2 | MORGAN STANLEY DEAN WITTER SER. (Asset backed) | 5,807 | F1+ | AA |
| 3 | KREDITANSTALT FUR WIEDERAUFBAU | 4,736 | NR | NR |
| 4 | BAYERISCHE LANDESBANK GIROZENTRALE | 4,467 | F1+ | AAA |
| 5 | NATIONAL TREASURY MANAGEMENT AGENCY | 4,541 | F1+ | AAA |
| 6 | UNILEVER NV | 4,342 | NR | NR |
| 7 | WESTDEUTSCHE LANDESBANK GIROZENTRALE | 4,196 | F1+ | AAA |
| 8 | LANDWIRTSCHAFTLICHE RENTENBANK | 4,092 | F1+ | AAA |
| 9 | LANDESBANK SCHLESWIG HOLSTEIN GIROZENTRALE | 3,982 | F1+ | AAA |
| 10 | ALLIANZ AG | 3,669 | NR | NR |
| 11 | SANTANDER CENTRAL HISPANO INTL LTD | 3,593 | F1+ | AA- |
| 12 | NEDERLANDSE WATERSCHAPSBANK NV ECD/ECP | 3,292 | NR | NR |
| 13 | LANDESBANK BADEN WURTTENBERG | 3,186 | F1+ | AAA |
| 14 | LANDESBANK RHEINLAND-PFALZ | 3,018 | F1+ | AAA |
| 15 | SIGMA FINANCE CORPORATION | 2,973 | F1+ | AAA |
| 16 | NORDDEUTSCHE LANDESBANK LUXBG SA | 2,894 | NR | NR |
| 17 | NORDDEUTSCHE LANDESBANK GIROZENTRALE | 2,806 | F1+ | AAA |
| 18 | SILVER TOWER FUNDING LIMITED | 2,716 | F1+ | AAA |

¹ A short-term rating has a time horizon of less than 12 months for most obligations, or up to three years for US public finance securities, and thus places greater emphasis on the liquidity necessary to meet financial commitments in a timely manner.

Fitch Ratings' short-term rating scale:

F1: Highest credit quality. Indicates the strongest capacity for timely payment of financial commitments; may have an added "+" to denote any exceptionally strong credit feature.

F2: Good credit quality. A satisfactory capacity for timely payment of financial commitments, but the margin of safety is not as great as in the case of the higher ratings.

F3: Fair credit quality. The capacity for timely payment of financial commitments is adequate; however, near-term adverse changes could result in a reduction to non-investment grade.

B: Speculative. Minimal capacity for timely payment of financial commitments, plus vulnerability to near-term adverse changes in financial and economic conditions.

C: High default risk. Default is a real possibility. Capacity for meeting financial commitments is solely reliant on a sustained, favourable business and economic environment.

D: Default. Denotes actual or imminent payment default.

"NR" indicates that Fitch Ratings does not rate the issuer or the issue in question.

| Rank | ECP Issuer Name | Outstandings USD Mln | Fitch Rating (ST) ¹ | Fitch Rating (LT) |
|--------------|---|-------------------------|-----------------------------------|----------------------|
| 19 | COMPASS SECURITISATION LTD | 2,602 | NR | NR |
| 20 | NATIONAL AUSTRALIA BANK LTD (ECD/ECP) | 2,557 | F1+ | AA |
| 21 | BANQUE AND CAISSE EPARGNE ETAT | 2,540 | NR | NR |
| 22 | REPUBLIC OF AUSTRIA | 2,532 | F1+ | AAA |
| 23 | CAISSE DEPOTS ET CONSIGNATIONS | 2,497 | F1+ | AAA |
| 24 | ARABELLA FUNDING LTD | 2,431 | NR | NR |
| 25 | BANK NEDERLANDSE GEMEENTEN NV | 2,281 | F1+ | AAA |
| 26 | BP AMOCO CAPITAL PLC | 2,280 | F1+ | AA+ |
| 27 | CANTABRIC FIN. PLC | 2,233 | NR | NR |
| 28 | ABN AMRO AUSTRALIA LTD (ECP)(guaranteed) | 2,116 | F1+ | AA |
| 29 | EKSPORTFINANS A/S | 2,088 | F1+ | AAA |
| 30 | FORD CREDIT EUROPE PLC (ECD/ECP) | 2,033 | F2 | BBB+ |
| 31 | VOLKSWAGEN COORDINATION CENTRE NV | 1,991 | NR | NR |
| 32 | AB SPINTAB SWEDMORTGAGE | 1,943 | F1+ | AA- |
| 33 | IIB CAPITAL DUBLIN (guaranteed) | 1,923 | F1 | A+ |
| 34 | ENI COORDINATION CENTER SA | 1,879 | NR | NR |
| 35 | DEUTSCHE TELEKOM AG | 1,855 | F2 | A- |
| 36 | BAVARIA SECURISATION LTD | 1,849 | NR | NR |
| 37 | DEUTSCHE AUSTRALIA LIMITED | 1,842 | F1+ | AA |
| 38 | SOCIETE GENERALE AUSTRALIA LTD (guaranteed) | 1,811 | F1+ | AA |
| 39 | MACQUARIE BANK LTD. | 1,728 | F1 | A+ |
| 40 | HYPOTHEKENBANK IN ESSEN AG | 1,719 | F1 | A |
| 41 | BANK AUSTRIA AG (ECP/ECD) | 1,709 | NR | NR |
| 42 | PENNINE FUNDING PLC | 1,649 | NR | NR |
| 43 | ALLIANCE AND LEICESTER | 1,616 | F1+ | AA- |
| 44 | RHEINGOLD SECURITISATION LTD | 1,551 | NR | NR |
| 45 | GOLDMAN SACHS GROUP LP | 1,549 | F1+ | AA- |
| 46 | INTERNATIONAL ENDESA BV | 1,482 | F1 | A+ |
| 47 | SGZ-BANK IRELAND PLC | 1,460 | F1+ | AA- |
| 48 | CAIXA GERAL DE DEPOSITOS | 1,458 | F1+ | AA- |
| 49 | KBC BANK NV-DENOMS CF NAR | 1,432 | F1+ | AA- |
| TOTAL | | 132,123 | | |

Source: Fitch Ratings and Market Place Data. Amounts shown by equivalent USD millions outstanding as at 2 April 2002.

ANNEX VII
to the EFMLG report on legal aspects of short-term securities

**FEATURES OF FRENCH CP AND EURO-CP:
SOME ELEMENTS OF COMPARISON**

2 September 2002

| Features of French CP and euro-CP: some elements of comparison | | |
|---|---|---|
| | French CP | Euro-CP |
| Emergence | 1985 | Early 80s. |
| Legal basis | Articles L. 213-1 to L. 213-4 of the French Financial and Monetary Code | No specific legal basis. |
| Definition | Bearer dematerialised securities. TCN are defined as " <i>titres émis au gré de l'émetteur, négociables sur un marché réglementé ou de gré à gré, qui représentent chacun un droit de créance pour une durée déterminée</i> " (Article L.213-1 of the Financial and Monetary Code), i.e. negotiable debt securities, each representing a fixed-term debt issued at the initiative of the issuer and traded on a regulated market or over-the-counter market. | Physical bearer paper containing a promise to pay. Market convention. |
| Domiciliation | Compulsory domiciliation in a credit institution, an investment firm established in France, the Caisse des Dépôts or a French branch of an EU credit institution or an investment firm authorised to keep cash accounts in France. See in this respect Articles 6.3.10 to 6.3.12 (Title 6, Custody and account-keeping of financial instruments of the General Regulations of the Conseil des Marchés Financiers). According to the Banque de France, more than 90% of CP is currently cleared at Euroclear France. | Immobilised global certificate lodged with a central securities depository such as Euroclear or Clearstream |
| Issuers | They are issued by investment firms, companies making public offerings, (resident or non-resident with at least two years of activity), public sector companies, economic interest groupings and Community institutions and international organisations of which France is a member. Since the law "NRE" (New Economic Regulations) of 15 May 2001, local public authorities are also authorised to issue CP. | |
| Maturity | French CP must have a fixed maturity date, an initial maturity of at least one day, and a maximum maturity not exceeding one year | Less than one year. |
| Minimum denominations | At least EUR 150,000 (or its equivalent in any other currency) | EUR 40,000. |
| Interest remuneration | The remuneration is freely determined by the issuer. Issuers are only requested to obtain the prior approval of the Banque de France when the remuneration varies according to an index that is linked to a rate that is not an usual interbank market rate, money market rate or bond market rate. | |
| Dematerialisation | Compulsory since January 1993. Title is evidenced by book entries and no physical document of title is issued. | No fully dematerialised system in the UK. |

| Features of French CP and euro-CP: some elements of comparison | | |
|---|---|--|
| | French CP | Euro-CP |
| Nature of investor's rights | | Governed by the law of the location of the securities depository holding the immobilised global certificate. |
| Authorised currencies | Euro and all other currencies, unless specifically excluded by the Banque de France. | Multi-currency short-term market which has largely absorbed the sterling domestic market. |
| Listing | No listing. | |
| Trading and placing | Trading and placing may be effected in France or abroad by credit institutions or investment firms provided that they are licensed to carry out placement activities in the relevant jurisdiction | |
| Buy-back | Possible. The issuer has the right to repurchase CP at any time | |
| Guarantee | Possible. The Information memorandum must mention the guarantee and provide the same information concerning the guarantor as that provided by the issuer. | |
| Investors | Mainly domestic (credit institutions, UCITS and corporates). | World-wide. |
| Rating | Rating is not compulsory. Although not required, any rating used must be obtained from a rating agency expressly mentioned in the list established by the French Ministry of Economy and Finance. Rated issuers are exempt from applying for a visa to the Commission des Opérations de Bourse (COB) and benefit from a simplified information procedure. | Not required by UK law or regulation. Matter of market convention. |
| Prospectus requirements | No prospectus requirements. However, the Information Memorandum ("Dossier de présentation financière") must be submitted to the Banque de France or for non rated issuers to the COB. | No prospectus requirements for ECP. |
| Settlement | T, T+1, T+2 | T+1, T+2 |
| Taxation | No withholding tax is applied on CP. | No withholding tax on interest for ECP with a maturity of less than 365 days. No VAT. No stamp duty. |

| Features of French CP and euro-CP: some elements of comparison | | |
|---|---|--|
| | French CP | Euro-CP |
| Supervisory and regulatory aspects | <p>Banque de France (BdF) is the competent authority supervising the market. BdF, besides supervising compliance with conditions for the issuance of CP, has the power to suspend or prohibit issuance when, for example, the issuer fails to comply with the conditions laid down for such issuance. BdF is informed of any new entrant to the market and is sent the "Dossier de présentation financière" (Information memorandum).</p> <p>The issuers are under obligation to give certain information about their economic and financial situation and their issuing programme. A decree specifies the content of these obligations and the conditions of publicity. The COB is in charge of ensuring these obligations are fulfilled (especially when issuers do not provide any rating and must apply for a visa of the COB).</p> | <p>UK CP/Euro-CP market enjoys a lighter regulatory regime because of its money market characteristics and because the transactions occur between wholesale market counterparties.</p> |

ANNEX VIII
to the EFMLG report on legal aspects of short-term securities

SAMPLE OF MARKET DOCUMENTATION

2 September 2002

Sample of Market Documentation for Commercial Paper

| Issuer | Programme | Issue Date | Governing Law |
|---|--|----------------|------------------------------------|
| Banco Santander Central Hispano | Primer Programa Anual De Pagarés 2001 Banco Santander Central Hispano, S.A. Mayo, 2001 Folleto Reducido De Programa Importe Nominal Del Programa: 6,000 million (ESP 998,316 million) | May 2001 | Portuguese |
| Bank Austria Aktiengesellschaft | EUR 5,000 million –Euro-Commercial Paper and Certificate of Deposit Programme | October 2001 | English |
| Bayer AG; Bayer Corporation | USD 8,000 million Global Commercial Paper Programme | November 2001 | New York/English |
| BGB Finance (Ireland)plc Landesbank Berlin – Girozentrale- | USD 15,000 million Euro Medium-Term Note Programme | June 2000 | English/German |
| Best Funding Limited | EUR 5,000 million Asset Backed Multi-Currency Euro Commercial Paper Programme | July 2000 | English |
| Cantabric Financing plc | USD 3,000 million Asset-Backed Euro Commercial Paper Programme | November 1998 | English |
| Case Corporation, Case France S.A.; Case Germany GmbH | USD 500 million Euro-Commercial Paper Programme | March 1999 | English |
| Caisse d'Epargne | EUR 10,000 million Euro Medium Term Note Programme | September 2000 | French |
| Dyckerhoff AG | EUR 500 million Euro Commercial Paper Programme | October 2000 | German |
| Eni S.p.A. ENI Coordination Center S.A. Eni International Bank Ltd. | EUR 3,000 million Euro-Commercial Paper Programme | November 2001 | English, Belgium, Italian (partly) |
| Fresenius AG | EUR 250 million EuroCommercial Paper Programme | March 2001 | German |
| Guardian Industries Corp; Guardian Europe S.A. | USD 500 million Euro-Commercial Paper Programme | June 2001 | English |
| Instituto de Credito Oficial | EUR 3,000 million Euro-Commercial Paper Programme | September 2001 | English |

| Issuer | Programme | Issue Date | Governing Law |
|---|--|-------------------|----------------------|
| KfW | EUR 12,000 million Multi-Currency Commercial Paper Programme | December 2000 | German |
| Lehman Brothers Holdings Inc, Lehman Brothers Holdings PLC; Lehman Brothers Treasury Co. B.V. | USD 3,000 million Euro-Commercial Paper Programme | May 2000 | English |
| Stadt Bochum | EUR 175 million Commercial Paper Programme | September 2001 | German |
| Adolf Würth GmbH & Co. KG; Würth Finance International B.V. | EUR 250 million Multi-Currency Commercial Paper Programme | November 2000 | German |
| Volkswagen AG; Volkswagen Financial Services AG, Volkswagen Bank GmbH, Co-ordination Center N.V.- S.A; Volkswagen Financial Services N.V. | EUR 10,000 million Multi-Currency Paper Programme | January 2000 | German |
| Württembergische Hypothekenbank Aktiengesellschaft | EUR 3,000 million Commercial Paper Programme | February 2001 | German |

ANNEX IX

to the EFMLG report on legal aspects of short-term securities

**EUROPEAN FINANCIAL MARKET LAWYERS GROUP AND
THE SUB-GROUP ON SHORT-TERM SECURITIES**

2 September 2002

THE EUROPEAN FINANCIAL MARKETS LAWYERS GROUP

| | |
|-------------------------------|--|
| Mr. Sáinz de Vicuña, Antonio | Chairman, ECB |
| Mr. Nierop, Erwin | ECB |
| Mr. Löber, Klaus | Secretary, ECB |
| Ms. Alonso Jimenez, Nuria | Banco Bilbao Vizcaya Argentaria |
| Avv. Balocco, Emilio | Sanpaoloimi S.p.A. |
| Mr. Bennett, Richard | HSBC Holdings |
| Mr. Bloom, David T. | |
| Dr. Bosch, Ulrich | Deutsche Bank |
| Mr. Bossin, Jean-Michel | Société Générale |
| Mr. Fiset, Pierre | |
| Mr. Brunet, Eduardo | BSCH |
| Mr. Torres Baraibar, Jose | |
| Mr. Daunizeau, Jean Michel | Crédit Agricole S. A. |
| Dr. Nizard, Frédéric | |
| Mr. Ferreira Malaquias, Pedro | Vasconcelos, Sá Carneiro, Fontes & Associados (<i>on behalf of Euribor Portuguese banks</i>) |
| Ms. Gillen, Marie-Paule | Kredietbank (Luxembourg) |
| Mr. Jansson, Gent | SEB |
| Dr. Parche, Ulrich | HypoVereinsbank |
| Dr. Poggemann, Klaus | WestLB |
| Mr. Sheridan, Bryan | AIB |
| Mr. Simonsen, Ole | Unibank |
| Ms. Simon-Thomas, Eva | ABN Amro Bank |
| Mr. Rogerson, Paul | |
| Dr. Than, Jürgen | Dresdner Bank |
| Mr. Tillian, Frank | BankAustria |
| Mr. Trust, Howard | Barclays Bank |
| Mr. Firth, Richard | |
| Dr. Tsibanoulis, Dimitris | Tsibanoulis & partners (<i>on behalf of Euribor Greek banks</i>) |

THE SUB-GROUP OF THE EFMLG ON SHORT-TERM SECURITIES

The preparation of this Report has been carried out by a Sub-Group of the EFMLG on short-term securities with the following composition:

| | |
|---------------------------|---------------------------------|
| Mr. Stenström, Mikael | Chairman and co-ordinator, ECB |
| Ms. Alonso Jimenez, Nuria | Banco Bilbao Vizcaya Argentaria |
| Mr. Bloom, David T. | HSBC Holdings |
| Ms. Genestrone, Ivana | San Paolo IMI S.p.A. |
| Dr. Nizard, Frédéric | Crédit Agricole S.A. |
| Dr. Parche, Ulrich | HypoVereinsbank |
| Mr Tillian, Frank | BankAustria |
| Mr. Vloemans, Dirk | Fortis Bank |
| Mr. Kerjean, Stéphane | ECB |

The Report has benefited from substantial contributions from Ralf Haeuser of Dresdner Bank, from Jean Granoux of Crédit Agricole S. A., and from members of staff of the ECB, in particular the country responsible lawyers in the Directorate General Legal Services, Sergio Grittini of the Directorate General Operations, and Frank Mayerlen of the Directorate General Statistics.

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2 September 2002

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